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NOTES, BILLS AND CHEQUES



THE
BILLS OF EXCHANGE
ACT

CHAP. 119, R. S. C.

WITH A

COPIOUS INDEX

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ALSO THE

ANNOTATIONS

Of the Act as prepared by the Editors for the R.S.C.

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BILLS OF EXCHANGE

R. S. C. CHAPTER 119.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

1. Short Title.—This Act may be cited as the Bills of Exchange Act. 53 V., c. 33, s. 1.

2. Interpretation.—In this Act, unless the context otherwise requires,—

- (a) '**acceptance**' means an acceptance completed by delivery or notification;
- (b) '**action**' includes counter-claim and set-off;
- (c) '**bank**' means an incorporated bank or savings bank carrying on business in Canada;
- (d) '**bearer**' means the person in possession of a bill or note which is payable to bearer;
- (e) '**bill**' means bill of exchange, and '**note**' means promissory note;
- (f) '**delivery**' means transfer of possession, actual or constructive, from one person to another;
- (g) '**holder**' means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof;
- (h) '**endorsement**' means an endorsement completed by delivery;
- (i) '**issue**' means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;
- (j) '**value**' means valuable consideration;
- (k) '**defence**' includes counter-claim;
- (l) '**non-business days**' means days directed by this Act to be observed as legal holidays or non-juridical days.

2. Any day other than as aforesaid is a **business day**. 53 V., c. 33, ss. 2 and 91.

B.E.—1

PART I.

GENERAL.

3. Thing Done in Good Faith.—A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not 53 V., c. 33, s. 89.

4. Signature.—Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some person by or under his authority. 53 V., c. 33, s. 90.

5. What Required of Corporation.—In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. 53 V., c. 33, s. 90.

6. Computation of Time.—Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 53 V., c. 33, s. 91.

7. Crossing Dividend Warrants.—The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. 53 V., c. 33, s. 94.

8. The Bank Act not Affected.—Nothing in this Act shall affect the provisions of the Bank Act. 53 V., c. 33, s. 95.

9. Imperial Acts, 15 Geo. III. c. 51, and 17 Geo. III. c. 30.—The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled *An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year

of His said Majesty's reign, intituled *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. 53 V., c. 33, s. 95.

10. Common Law of England.—The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. 54-55 V., c. 17, s. 8.

11. Protest Prima Facie Evidence.—A protest of any bill or note within Canada, and any copy thereof as copied by the notary or justice of the peace, shall, in any action, be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest or copy. 53 V., c. 33, s. 93.

12. Copy of Protest, Prima Facie Evidence.—If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service. 53 V., c. 33, s. 71.

13. Officer of Bank not to Act as Notary.—No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. 53 V., c. 33, s. 51.

14. Consideration, Purchase Money of Patent.—Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words *Given for a patent right*.

2. Absence of Necessary Words.—Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. 53 V., c. 33, s. 30.

15. Transferee to take with Equities.—The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. 53 V., c. 33, s. 30.

16. Transferring Defective Note.—Every one who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *Given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an **indictable offence and liable to imprisonment** for any term not exceeding **one year**, or to such **fine**, not exceeding **two hundred dollars**, as the court thinks fit. 53 V., c. 33, s. 30.

PART II.

BILLS OF EXCHANGE.

Form of Bill and Interpretation.

17. Bill of Exchange Defined.—A Bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

2. Non-compliance with Requisites.—An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange.

3. Unconditional Order.—An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

- (a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,
- (b) a statement of the transaction which gives rise to the bill;

is unconditional. 53 V., c. 33, s. 3.

18. Instrument Payable on Contingency.—An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

2. A Bill may be Addressed to two or more Drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. 53 V., c. 33, ss. 6 and 11.

19. Payee, Drawer or Drawee.—A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

2. Two or more Payees.—A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

3. Holder of Office Payee.—A bill may be made payable to the holder of an office for the time being. 53 V., c. 33, ss. 5 and 7.

20. The Drawee must be Named or otherwise indicated in a bill with reasonable certainty. 53 V., c. 33, s. 6.

21. Transfer Words.—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

2. A Negotiable Bill may be payable either to order or to bearer.

3. A Bill is Payable to Bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

4. Certainty of Payee.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

5. Where the Payee is a Fictitious or non-existing person, the bill may be treated as payable to bearer. 53 V., c. 33, ss. 7 and 8.

22. A Bill is Payable to Order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

2. When Payable to Person or Order.—Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. 53 V., c. 33, s. 8.

23. A Bill is Payable on Demand,—

- (a) which is expressed to be payable on demand, or on presentation; or,
- (b) in which no time for payment is expressed.

2. Endorsed when Overdue.—Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. 53 V., c. 33, s. 10.

24. A Bill is Payable at a Determinable Future Time, within the meaning of this Act, which is expressed to be payable,—

- (a) **at sight** or at a fixed period after date or sight;
- (b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1.

25. An Inland Bill is a bill which is, or on the face of it purports to be,—

- (a) both drawn and payable within Canada; or,

(b) drawn within Canada upon some person resident therein.

2. **Any other bill** is a foreign bill.

3. **Presumption.**—Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. 53 V., c. 33, s. 4.

26. **Bill or Note.**—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his **option**, either as a bill of exchange or as a promissory note. 53 V., c. 33, s. 5.

27. **A Bill is not Invalid** by reason only,—

- (a) that it is **not dated**;
- (b) that it does not **specify the value** given, or that any value has been given therefor;
- (c) that it does not **specify the place** where it is drawn or the place where it is payable;
- (d) that it is **antedated or postdated**, or that it bears date on a **Sunday or other non-juridical day**. 53 V., c. 33, ss. 3 and 13.

28. **Sum Certain.**—The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

- (a) with interest;
- (b) by stated instalments;
- (c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;
- (d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

2. **Figures and Words.**—Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

3. With Interest.—Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. 53 V., c. 33, s. 9.

29. True Date Presumption.—Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. 53 V., c. 33, s. 13.

30. Undated Bill Payable after Date.—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that,—

(a) where the holder in good faith and by mistake inserts a **wrong date**; and,

(b) **Liability of Holder**—in every other case where a wrong date is inserted;

if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2.

31. Perfecting Bill.—Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 53 V., c. 33, s. 20.

32. When to be Complete.—In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given: Provided that if any such

instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

2. **Reasonable time** within the meaning of this section is a question of fact. 53 V., c. 33, s. 20.

33. Referee in Case of Need.—The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

2. It is in the **option** of the holder to resort to the referee in case of need or not, as he thinks fit. 53 V., c. 33, s. 15.

34. Stipulations.—The drawer of a bill, and any endorser, may insert therein an express stipulation,—

- (a) negativing or limiting his own liability to the holder;
- (b) waiving, as regards himself, some or all of the holder's duties. 53 V., c. 33, s. 16.

Acceptance and Interpretation.

35. Acceptance Defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

2. **Drawee's Name Wrong.**—Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. 53 V., c. 33, s. 17.

36. An Acceptance is invalid unless it complies with the following conditions, namely:—

- (a) It must be written on the bill and be signed by the drawee;
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

2. **The mere signature** of the drawee written on the bill without additional words is a sufficient acceptance. 53 V., c. 33, s. 17.

37. A Bill may be Accepted,—

- (a) before it has been signed by the drawer, or while otherwise incomplete;
- (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

2. **Acceptance after Dishonour.**—When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3.

38. Kinds.—An acceptance is either,—

- (a) general; or,
- (b) qualified.

2. **A general acceptance** assents without qualification to the order of the drawer.

3. **A qualified acceptance** in express terms varies the effect of the bill as drawn, and in particular, an acceptance is qualified which is,—

- (a) **conditional**, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) **partial**, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) **Time**—qualified as to time;
- (d) **Drawees**—the acceptance of some one or more of the drawees, but not of all.

4. **Specified Place.**—An acceptance to pay at a particular specified place is not on that account conditional or qualified. 53 V., c. 33, s. 19.

39. When Acceptance Complete.—Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is

incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 53 V., c. 33, s. 21.

Delivery.

40. Requisites.—As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,—

- (a) in order to be effectual must be made either by or under the **authority** of the party drawing, accepting or endorsing, as the case may be;
- (b) may be shown to have been **conditional** or for a special purpose only, and not for the purpose of transferring the property in the bill.

2. Presumption.—If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. 53 V., c. 33, s. 21.

41. Parting with Possession.—Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. 53 V., c. 33, s. 21.

Computation of Time, non-juridical days and days of grace.

42. Computation of Time.—Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such province, shall be the **last day of grace**. 53 V., c. 33, s. 14.

43. Non-juridical Days.—In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:—

(a) In all the Provinces of Canada,

Sundays,
New Year's Day,
Good Friday,
Easter Monday,
Victoria Day,
Dominion Day,
Labour Day,
Christmas Day,

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign:
Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada.

The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(b) In the Province of Quebec, in addition to the said days, The Epiphany,
The Ascension,
All Saints' Day.
Conception Day;

(c) Provincial Proclamation.—In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such province for a public holiday or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. 53 V., c. 33, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 E. VII., c. 12, ss. 2 and 4.

44. Time of Payment.—Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. 53 V., c. 33, s. 14.

45. Sight Bill.—Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date

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of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. 53 V., c. 33, s. 14.

46. Due Date.—Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace.

2. The term 'month' in a bill means the calendar month. 53 V., c. 33, s. 14.

Capacity and Authority of Parties.

47. Capacity to Incur Liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a **corporation** to make itself liable as drawer, acceptor or endorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation. 53 V., c. 33, s. 22.

48. Effect of Disability on Holder.—Where a bill is drawn or endorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. 53 V., c. 33, s. 22.

49. Forgery.—Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that,—

(a) **Ratification.**—Nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

(b) Recovery of Amount Paid on Forged Cheque.—If a cheque payable to order is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery.

2. Default of Notice.—In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights. 53 V., c. 33, s. 24.

50. Recovery of amount Paid on Forged Endorsement.—If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement, if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

2. Rights over.—Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement.

3. Notice of Forgery.—Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same

way, as notice of protest or dishonour of a bill may be given or addressed under this Act. 60-61 V., c. 10, s. 1.

51. A Signature by Procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority. 53 V., c. 33, s. 25.

52. Signing in Representative Capacity.—Where a person signs a bill as drawer, endorser or acceptor, and add words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

2. Rule for Determining Capacity.—In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. 53 V., c. 33, s. 26.

Consideration.

53. Valuable Consideration for a bill may be constituted by,—

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability;

2. Form of Bill.—Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. 53 V., c. 33, s. 27.

54. Holder for Value.—Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

2. In Case of Lien.—Where the holder of a bill has a lien on it, arising either from contract or by implication of law,

he is deemed to be a holder for value to the extent of the sum for which he has a lien. 53 V., c. 33, s. 27.

55. An Accommodation Party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person.

2. Liability of Party.—An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. 53 V., c. 33, s. 28.

56. A Holder in Due Course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(a) **Notice.**—That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact:

(b) **Good Faith.**—That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

2. Title Defective.—In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 53 V., c. 33, s. 29.

57. Right of Subsequent Holder.—A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. 53 V., c. 33, s. 29.

58. Presumption of Value.—Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

2. Due Course.—Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the **burden of proof** that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. 53 V., c. 33, s. 30.

59. Usurious Consideration.—No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. 53 V., c. 33, s. 30.

Negotiation.

60. By Transfer.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

2. By Delivery.—A bill payable to bearer is negotiated by delivery.

3. By Endorsement.—A bill payable to order is negotiated by the endorsement of the holder completed by delivery. 53 V., c. 33, s. 31.

61. Without Endorsement.—Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transfer had in the bill, and the transferee in addition acquires the right to have the endorsement of the transfer.

2. Representative Capacity.—Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. 53 V., c. 33, s. 31.

62. An Endorsement in order to operate as a negotiation,

(a) must be **written** on the bill itself and be signed by the endorser;

(b) must be an endorsement of the entire bill.

2. An endorsement written on an **allonge**, or on a *copy* of a bill issued or negotiated in a country where *copies* are recognized, is deemed to be written on the bill itself.

3. **A Partial Endorsement**, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. 53 V., c. 33, s. 32.

63. The Simple Signature of the endorser on the bill, without additional words, is a sufficient endorsement.

2. Two or More Payees.—Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. 53 V., c. 33, s. 32.

64. Misspelling Payee's Name.—Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature. 53 V., c. 33, s. 32.

65. Presumption as to Order of Endorsement.—Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. 53 V., c. 33, s. 32.

66. Disregarding Condition.—Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not. 53 V., c. 33, s. 33.

67. Endorsement in Blank.—An endorsement may be made in blank or special.

2. An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.

3. **A Special Endorsement** specifies the person to whom, or to whose order, the bill is to be payable.

4. **Application of Act to.**—The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

5. **Conversion of Blank Endorsement.**—Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. 53 V., c. 33, ss. 32 and 34.

68. Restrictive Endorsement.—An endorsement may also contain terms making it restrictive.

2. An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order, for collection.'

3. **Rights of Endorsee.**—A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

4. **If Further Transfer is Authorized.**—Where a restrictive endorsement authorizes further transfer, all subsequent endorsee take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. 53 V., c. 33, ss. 32 and 35.

69. When Negotiability Ceases.—Where a bill is negotiable in its origin, it continues to be negotiable until it has been.—

(a) restrictively endorsed; or,

(b) discharged by payment or otherwise. 53 V., c. 33, s. 36.

70. Where an Overdue Bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it.

2. A Bill Payable on Demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

3. What is an Unreasonable Length of Time for such purpose is a question of fact. 53 V., c. 33, s. 36.

71. Presumption as to.—Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. 53 V., c. 33, s. 36.

72. Taking Bill with Notice of Dishonour.—Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. 53 V., c. 33, s. 36.

73. Re-issue of Bill.—Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. 53 V., c. 33, s. 37.

74. Rights of Holder.—The rights and powers of the holder of a bill are as follows:

- (a) **He may Sue** on the bill in his own name;
- (b) **Prior Defects.**—Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) **Where His Title is Defective,** if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and,

(d) **Discharge from Him.**—Where his title is defective if he obtains payment of the bill the person who pays him in due course get a valid discharge for the bill. 53 V., c. 33, s. 38.

Presentment for Acceptance.

75. When Necessary.—Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. **Where a Bill Expressly Stipulates** that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

3. **In No Other Case** is presentment for acceptance necessary in order to render liable any party to the bill. 53 V., c. 33, s. 39.

76. Presentment Excused.—Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. 53 V., c. 33, s. 39.

77. Sight Bill.—Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

2. **If He Does not Do so,** the drawer and endorsers prior to that holder are discharged.

3. **Reasonable Time.**—In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. 53 V., c. 33, s. 40; 54-55 V., c. 17, s. 5.

78. Rules.—A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:

- (a) **By Holder to Drawee.**—The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;
- (b) **To All Drawees.**—Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only;
- (c) **Where the Drawee is Dead.** presentment may be made to his personal representative;
- (d) Where authorized by agreement or usage, a presentment through the **post office** is sufficient. 53 V., c. 33, s. 41.

79. Excuses.—Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,—

- (a) **Where the Drawee is Dead**, or is a fictitious person or a person not having capacity to contract by bill;
- (b) **Impracticability**—where, after the exercise of reasonable diligence, such presentment cannot be effected;
- (c) where although the presentment has been irregular, acceptance has been refused on some other ground.

2. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. 53 V., c. 33, s. 41; 54-55 V., c. 17, s. 6.

80. Time for Acceptance.—The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter.

2. Dishonour.—When a bill is so duly presented for acceptance and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance.

3. Loss of Rights.—If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers.

1. Date of Acceptance.—In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid, but not later than the day of his actual acceptance of the bill.

5. Refusing Acceptance.—If the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance. 2 E. VII., c. 2, s. 1.

81. Dishonour.—A bill is dishonoured by non-acceptance,

(a) **Presentment**—when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or,

(b) when presentment for acceptance is excused and the bill is not accepted. 53 V., c. 33, s. 43.

82. Recourse in Such Case.—Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. 53 V., c. 33, s. 43.

83. Qualified Acceptance.—The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

2. Assent.—When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. 53 V., c. 33, s. 44.

84. Where a Qualified Acceptance is Taken.—and the drawer or an endorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given. 53 V., c. 33, s. 44.

Presentment for Payment.

85. Necessity.—Subject to the provisions of this Act, a bill must be duly presented for payment.

2. **If it is Not so Presented.** the drawer and endorsers shall be discharged.

3. **Manner of.**—Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment. 53 V., c. 33, ss. 45 and 52.

86. Time for.—A bill is duly presented for payment which is presented, :—

- (a) **Due Date**—when the bill is not payable on demand, on the day it falls due;
- (b) **Demand Bill**—when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

2. **Reasonable Time.**—In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. 53 V., c. 33, s. 45.

87. By and to Whom.—Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place as hereinafter defined, and either to the person designated by the bill as payor or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found.

2. **Two Acceptors.**—When a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

3. **When the Drawee or Acceptor of a Bill is Dead,** and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. 53 V., c. 33, s. 45.

88. A Bill is Presented at the Proper Place.—

- (a) where a place of payment is specified in the bill or acceptance, and the bill is there presented;

- (b) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
- (c) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not at his ordinary residence, if known;
- (d) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. 53 V., c. 33, s. 45.

89. Sufficient Presentment.—Where a bill is presented at the proper place as aforesaid and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found, no further presentment to the drawee or acceptor is required. 53 V., c. 33, s. 45.

90. Presentment at Post Office.—Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.

2. Through Post Office.—Where authorized by agreement or usage, a presentment through the post office is sufficient. 53 V., c. 33, s. 45.

91. Delay in making Presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 53 V., c. 33, s. 46.

92. Presentment for Payment is dispensed with,—

- (a) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

- (b) where the drawee is a **fictitious person**;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an endorser, where the bill was accepted or made for the **accommodation** of that endorser, and he has no reason to expect that the bill would be paid if presented;
- (e) by **waiver** of presentment, express or implied.

2. Not Dispensed with.—The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment. 53 V., c. 33, s. 46.

93. When no Place of Payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable.

2. When no Place of Payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the **omission** to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court.

3. Delivery on Payment.—When a bill is paid the holder shall forthwith deliver it up to the party paying it. 53 V., c. 33, s. 52.

94. Time for Presentment.—Where the address of the acceptor for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity.

2. Parties in Different Places.—Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

3. **Delay in Presentment** or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment. 53 V., c. 33, s. 66.

Dishonour.

95. A Bill is Dishonoured for Non-payment.—

- (a) when it is duly presented for payment and payment is refused or cannot be obtained; or,
- (b) when presentment is excused and the bill is overdue and unpaid.

2. **Recourse.**—Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. 53 V., c. 33, s. 41.

96. Notice of Dishonour.—Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged; Provided that,—

- (a) **Subsequent Holder**—where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;
- (b) **Notice of Non-payment**—where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

2. **Notice to Acceptor.**—In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. 53 V., c. 33, ss. 48 and 52.

97. Notice.—Notice of dishonour in order to be valid and effectual must be given,—

- (a) not later than the judicial or business day next following the dishonour of the bill;

- (b) by or on behalf of the holder, or by or on behalf of an endorser, who at the time of giving it, is himself liable on the bill;
- (c) in the case of the death, if known to the party giving notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found;
- (d) in case of two or more drawers or endorsers who are not partners, to each of them, unless one of them has authority to receive notice for the others. 53 V., c. 33, s. 49.

98. Notice of Dishonour may be given.—

- (a) as soon as the bill is dishonoured;
- (b) to the party to whom the same is required to be given, or to his agent in that behalf;
- (c) by an agent either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;
- (d) in writing or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

2. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. 53 V., c. 33, s. 49.

99. In point of form.—

- (a) the return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour;
- (b) a written notice need not be signed.

2. An insufficient written notice may be supplemented and validated by verbal communication. 53 V., c. 33, s. 49.

100. Notice to Agent.—Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder.

2. If the agent gives notice to his principal he must do so within the same time as if he were an independent holder. 53 V., c. 33, s. 49.

101. Notice to Antecedent Parties.—Where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that a holder has after dishonour. 53 V., c. 33, s. 49.

102. A Notice of Dishonour enures for the benefit, -

- (a) of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder;
- (b) **Parties to Whom**—of the holder and of all endorsers subsequent to the party to whom notice is given, where given, by or on behalf of an endorser entitled under this Part to give notice. 53 V., c. 33, s. 49.

103. Sufficiency of Giving.—Notice of the dishonour of any bill payable in Canada shall notwithstanding anything in this Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence, or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

2. Sufficiency of Notice.—Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

3. Death of Party.—Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. 53 V., c. 33, s. 49.

104. Miscarriage in Post Service.—Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office. 53 V., c. 33, s. 49.

105. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate the notice must be given with reasonable diligence. 53 V., c. 33, s. 50.

106. Notice of Dishonour is dispensed with.—

(a) **Reasonable Diligence**—when after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged;

(b) **by waiver** express or implied.

2. Time of.—Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. 53 V., c. 33, s. 50.

107. Notice of dishonour is dispensed with as regards the drawer where, —

(a) the drawer and drawee are the same person;

(b) the drawee is a **fictitious person** or a person not having capacity to contract;

(c) the drawer is the person to whom the bill is presented for payment;

(d) the drawee or acceptor is, as between himself and the drawer, under **no obligation to accept** or pay the bill;

(e) the drawee has **countermanded payment**. 53 V., c. 33, s. 50.

108. Notice of dishonour is dispensed with as regards the endorser where, —

- (a) the drawee is a **fictitious person** or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill;
- (b) the endorser is the person to whom the bill is presented for payment;
- (c) the bill was accepted or made for his **accommodation** 53 V., c. 33, s. 50.

Protest.

109. Necessity of.—In order to render the acceptor of a bill liable it is not necessary to protest it. 53 V., c. 33, s. 52.

110. Protest is Dispensed with by any circumstances which would dispense with notice of dishonour. 53 V., c. 33, s. 51.

111. Delay in Noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. When the cause of delay ceases to operate, the bill must be noted or protested with **reasonable diligence**. 53 V., c. 33, s. 51.

112. Where a foreign bill appearing on the face of it to be such has been dishonoured by **non-acceptance** it must be duly protested for non-acceptance.

2. Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

3. Where a foreign bill has been accepted only as to part it must be protested as to the **balance**.

4. If a foreign bill is not protested as by this section required the drawer and **endorsers are discharged**. 53 V., c. 33, ss. 44 and 51.

113. Protest of Inland Bill.—Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it shall not, except in the province of **Quebec**, be necessary to note or protest an inland bill in

order to have recourse against the drawer or endorsers 53 V., c. 33, s. 51.

114. Discharge in Default of Protest.—In the case of an inland bill drawn upon any person in the province of Quebec or payable or accepted at any place in the said province, the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour.

2. Protest Unnecessary.—Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary. 53 V., c. 33, s. 51.

115. Subsequent Protest for Non-payment.—A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment. 53 V., c. 33, s. 51.

116. Protest for Better Security.—Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. 53 V., c. 33, s. 51; 54-55 V., c. 17, s. 1.

117. Acceptance for Honour.—Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

2. Protest for Non-payment.—When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. 53 V., c. 33, s. 66.

118. Noting Equivalent to Protest.—For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before

the expiration of the specified time or the taking of the proceeding. 53 V., c. 33, s. 92.

119. Noting or Protest.—Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour.

2. Extending Protest.—When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. 53 V., c. 33, ss. 51 and 92.

120. Protest on Copy or Particulars.—Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. 53 V., c. 33, s. 51.

121. Place of Protest.—A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentation and dishonour of such bill: Provided that,

(a) **Where Bill Returned**—when a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, not later than on the day of its return or the next judicial day;

(b) **Time When**—every protest for dishonour, either for non-acceptance or non-payment, may be made on the day of such dishonour, and in case of non-acceptance at any time after non-acceptance, and in case of non-payment at any time after three o'clock in the afternoon. 53 V., c. 33, s. 51.

122. Contents of Protest.—A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

- (a) the **person** at whose request the bill is protested;
- (b) the **place** and date of protest;
- (c) the **cause or reason** for protesting the bill;

- (d) the **demand** made and the answer given, if any; or,
- (e) the fact that the drawee or acceptor could **not be found**. 53 V., c. 33, s. 51.

123. Official when Notary is Not Accessible.—Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. 53 V., c. 33, s. 93.

124. The expense of noting and protesting any bill and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon.

2. Notaries may charge the **fees** in each province heretofore allowed them. 53 V., c. 33, s. 93.

125. The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof.

2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms. 53 V., c. 33, s. 93.

126. When Notice of Protest Shall be Given.—Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been **due** given and served, if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this Part for notice of dishonour. 53 V., c. 33, s. 49.

Liabilities of Parties.

127. Equitable Assignment.—A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. 53 V., c. 33, s. 53.

128. Engagement by Acceptance.—The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. 53 V., c. 33, s. 54.

129. Estoppel.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course—

- (a) the existence of the drawer, the **genuineness of his signature**, and his capacity and authority to draw the bill;
- (b) in the case of a bill payable to drawer's order, the **capacity of the drawer to endorse**, but not the genuineness or validity of his endorsement;
- (c) in the case of a bill payable to the order of a third person, the existence of the **payee** and his then **capacity to endorse**, but not the genuineness or validity of his endorsement. 53 V., c. 33, s. 54.

130. The drawer of a bill, by drawing it,—

- (a) **engages that** on due presentment it shall be accepted and paid according to its **tenor**, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;
- (b) **is precluded** from denying to a holder in due course the existence of the **payee** and his then **capacity to endorse**. 53 V., c. 33, s. 55.

131. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. 53 V., c. 33, ss. 23 and 56.

132. Trade or Assumed Name.—Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name.

2. The signature of the **name of a firm** is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm. 53 V., c. 33, s. 23.

133. The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized,—

- (a) **engages that** on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;
- (b) is precluded from denying to a holder in due course the **genuineness** and regularity in all respects of the drawer's signature and all previous endorsements;
- (c) is precluded from denying to his immediate or a subsequent endorser that the bill was, at the time of his endorsement, **a valid and subsisting bill**, and that he had then a good title thereto. 53 V., c. 33, s. 55.

134. Measure of Damages.—Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,—

- (a) **the amount** of the bill;
- (b) **interest** thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;
- (c) **the expenses** of noting and protest. 53 V., c. 33, s. 55.

135. Recovery of Same.—In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser, the damages aforesaid. 53 V., c. 33, s. 55.

136. Re-exchange and Interest.—In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. 53 V., c. 33, s. 57.

137. Transferrer by Delivery.—Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a "transferrer by delivery."

2. A transferrer by delivery is not liable on the instrument. 53 V., c. 33, s. 58.

138. Warranty by.—A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value,—

- (a) that the bill is what it purports to be;
- (b) that he has a right to transfer it; and,
- (c) that at the time of transfer he is not aware of any fact which renders it valueless. 53 V., c. 33, s. 58.

Discharge of Bill.

139. Payment.—A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

2. Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged. 53 V., c. 33, s. 59.

140. Payment by Drawer or Endorser.—Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged; but,—

(a) **Gives rights.**—Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(b) **Second negotiation.**—Where a bill is paid by an endorser or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. 53 V., c. 33, s. 59.

141. Acceptor Holding at Maturity.—When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. 53 V., c. 33, s. 60.

142. Renouncing Rights.—When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

2. Against One Party.—The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

3. A renunciation must be in **writing**, unless the bill is delivered up to the acceptor.

4. Nothing in this section shall affect the rights of a **holder in due course** without notice of renunciation. 53 V., c. 33, s. 61.

143. Cancellation of Bill.—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

2. Of any Signature.—In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

3. Discharge of Endorser.—In such case, any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. 53 V., c. 33, s. 62.

144. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the **burden of proof** lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. 53 V., c. 33, s. 62.

145. Alteration of Bill.—Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers: Provided that where a bill has been materially altered, but the alteration is not apparent,

and the bill is in the hands of a **holder in due course**, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 53 V., c. 33, s. 63.

146. In particular any alteration,

- (a) of the **date**;
- (b) of the **sum payable**;
- (c) of the **time of payment**;
- (d) of the **place of payment**;
- (e) by the **addition of a place** of payment without the acceptor's assent where a bill has been accepted generally;

is a material alteration. 53 V., c. 33, s. 63.

Acceptance and Payment for Honour.

147. Acceptance for Honour *supra* Protest.—Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 53 V., c. 33, s. 64.

148. In Part.—A bill may be accepted for honour for part only of the sum for which it is drawn. 53 V., c. 33, s. 64.

149. Deemed to be for Honour of Drawer.—Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. 53 V., c. 33, s. 64.

150. Maturity of After Sight Bill.—Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honour. 53 V., c. 33, s. 64.

151. Requirements.—An acceptance for honour *supra* protest, in order to be valid must,—

- (a) **be written** on the bill, and indicate that it is an acceptance for honour; and,
- (b) **be signed** by the acceptor for honour. 53 V., c. 33, s. 64.

152. Liability of Acceptor for Honour.—The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment and that he receives notice of these facts.

2. To Holder as others.—The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. 53 V., c. 33, s. 66.

153. Payment for Honour *supra* Protest.—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

3. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

4. Entitled to Bill.—The payee for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

5. Liability for Refusing.—If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. 53 V., c. 33, s. 67.

154. Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

2. **Declaration.**—The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 53 V., c. 33, s. 67.

155. **Discharge.**—Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is **subrogated for**, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. 53 V., c. 33, s. 67.

Lost Instruments.

156. **Holder to Have Duplicate of Lost Bill.**—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again.

2. **Refusal.**—If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be **compelled** to do so. 53 V., c. 33, s. 68.

157. **In any action or proceeding upon a bill,** the court or a judge may order that the loss of the instrument shall not be set up, provided an **indemnity** is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. 53 V., c. 33, s. 69.

Bill in a Set.

158. **Where a bill is drawn in a set,** each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

2. **The acceptance** may be written on any part, and it must be written on one part only. 53 V., c. 33, s. 70.

159. **Endorsing More Than One Part.**—Where the holder of a set endorses two or more parts to different persons, he is

ARTICLE 8 OF EXCHANGE.

part on every such part, and every endorser subsequent to him is liable on the part as he is if it were a separate bill.

2. **Negotiation to Different Holders.**—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, owner of the true owner of the bill; Provided that nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

3. **If the drawee accepts more than one part,** and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

4. **Part Accepted.**—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

5. Subject to the provisions of this section, where any one part of a bill drawn in a set is **discharged** by payment or otherwise, the whole bill is discharged. 53 V., c. 33, s. 70.

Conflict of Laws.

160. Requisites of Form.—Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made; Provided that,

(a) where a bill is issued out of Canada, it is not invalid by reason only that it is **not stamped** in accordance with the law of the place of issue;

(b) where a bill, issued out of Canada, **conforms**, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. 53 V., c. 33, s. 71.

161. Lex Locum.—Subject to the provisions of this Act, the law of the place where a bill of exchange is drawn or accepted, or of the protest of a bill drawn in one country and payable in another, or of payment made in another, shall be applied by the law of the place where the contract is made, provided where an instrument is drawn in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada. 53 V.L. c. 33, s. 71.

162. Law as to Duties of Holder.—The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. 53 V.L. c. 33, s. 71.

163. Currency.—Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for eight drafts at the place of payment on the day the bill is payable. 53 V.L. c. 33, s. 71.

164. Due Date.—Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. 53 V.L. c. 33, s. 71.

PART III.

CHEQUES ON A BANK.

165. A cheque is a bill of exchange drawn on a bank, payable on demand.

2. Provisions as to Bills Apply.—Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V.L. c. 33, s. 72.

166. Presentment for Payment.—Subject to the provisions of this Act.—

(a) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the

person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid:

(b) **the holder of such cheque**, as to which such drawer or person is discharged, **shall be a creditor**, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

2. **Reasonable Time.**—In determining what is a reasonable time, within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V., c. 33, s. 73.

167. Authority to Pay.—The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined by,

(a) **countermand** of payment;

(b) notice of the customer's **death**. 53 V., c. 33, s. 74.

Crossed Cheques.

168. Definition.—Where a cheque bears across its face an addition of,—

(a) the word '**bank**' between two parallel transverse lines, either with or without the words 'not negotiable'; or,

(b) two parallel transverse lines simply, either with or without the words 'not negotiable';

such addition constitutes a crossing, and the cheque is **crossed generally**.

2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is **crossed specially** and to that bank. 53 V., c. 33, s. 75.

169. By Drawer.—A cheque may be crossed generally or specially by the drawer.

2. Where a cheque is uncrossed, the **holder may cross it generally or specially.**

3. Where a cheque is crossed generally, the holder may cross it specially.

4. Where a cheque is crossed generally or specially, the holder may add the words **not negotiable.**

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another **bank for collection.**

6. **Changing Crossing. Uncrossing**—Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself.

7. A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words **pay to**, and initialling the same. 53 V., c. 33, s. 76.

170. Materially.—A crossing authorized by this Act is a material part of the cheque.

2. **Altering Crossing.**—It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 78.

171. Crossed to more than one Bank.—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78.

172. Liability for Improper Payment.—Where the bank on which a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible for incurring any liability, nor

shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. 53 V., c. 33, s. 78.

173. Protection in such Case.—Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79.

174. Where a person takes a crossed cheque which bears on it the words 'not negotiable.' he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80.

175. Customer without Title.—Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81.

PART IV.

PROMISSORY NOTES.

176. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.

2. Endorsed by Maker.—An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

3. A note is not invalid by reason only that it contains also a **pledge** of collateral security with authority to sell or dispose thereof. 53 V., c. 33, s. 82.

177. Inland Note.—A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note.

2. Any other note is a **foreign note**. 53 V., c. 33, s. 82.

178. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. 53 V., c. 33, s. 83.

179. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

2. **Individual Promise.**—Where a note runs 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several note. 53 V., c. 33, s. 84.

180. Demand Note Presentment.—Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

2. In determining what is a **reasonable time**, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. 53 V., c. 33, s. 85.

181. Endorser Discharged.—If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security. 53 V., c. 33, s. 85.

182. Not Deemed Overdue.—Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which

he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 53 V.L. c. 33, s. 85.

183. Presentment, Where.—Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2. Liability of Maker.—In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

3. Note Payable Generally.—If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable. 53 V.L. c. 33, s. 86.

184. As to Endorser.—Presentment for payment is necessary in order to render the endorser of a note liable.

2. Where a note is in the body of it made payable at a particular place, presentment at that **place is necessary** in order to render an endorser liable.

3. What Sufficient.—When a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. 53 V.L. c. 33, s. 86.

185. The maker of a promissory note, by making it,—

- (a) **engages** that he will pay it according to its tenor;
- (b) **is precluded** from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V.L. c. 33, s. 87.

186. Application of Act to Notes.—Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

2. Terms Corresponding.—In the application of such provisions the maker of a note shall be deemed to correspond

with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. The provisions of this Act as to bills relating to—

- (a) presentment for acceptance;
- (b) acceptance;
- (c) acceptance *supra* protest;
- (d) bills in a set:

do not apply to notes. 53 V., c. 33, s. 88.

187. Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. 53 V., c. 33, s. 88.

SCHEDULE.

Form A.

NOTING FOR NON-ACCEPTANCE

(Copy of Bill and Endorsement.)

On the 19th, the above bill was, by me, at the request of [REDACTED] presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of [REDACTED] and I received for answer: 'The said bill is therefore noted for non-acceptance.'

1

Notary Public

(*Date and place.*)

19

Due notice of the above was by me served upon { A. B.,
C. D., }
the { drawer, } personally, on the day of
(or, at his residence, office or usual place of business) in
, on the day of (or, by depositing
such notice, directed to him at in His Majesty's

post office in the city [town or village], on the day
of , and prepaying the postage thereon).

A. B.,

Notary Public.

(*Date and place.*)

19 .

53 V., c. 33, sch., form A.

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of Bill and Endorsements.*)

On this day of , in the year 19 , I,
A. B., notary public for the province of , dwelling at
 , in the province of , at the request of
 , did exhibit the original bill of exchange, whereof a true
copy is above written, unto E. F., the { drawee } thereof
personally (*or*, at his residence, office *or* usual place of business) in , and, speaking to himself (*or* his wife, his clerk,
or his servant, &c.) did demand { acceptance } thereof; unto
which demand { he } answered: {
 | she }

Wherefore I, the said notary, at the request aforesaid, have
protested, and by these presents do protest against the acceptor, drawer and endorsers (*or* drawer and endorsers) of
the said bill, and other parties thereto or therein concerned,
for all exchange, re-exchange, and all costs, damages and
interest, present and to come, for want of { acceptance } of
the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

53 V., c. 33, sch., form B.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A
BILL PAYABLE AT A STATED PLACE.

(Copy of Bill and Endorsements.)

On this day of in the year 19 I,
 A. B., notary public for the province of , dwelling
 at , in the province of , at the request
 of , did exhibit the original bill of exchange
 whereof a true copy is above written, unto E. F., the
 { drawee } thereof, at , being the stated
 { acceptor } place where the said bill is payable, and there speaking
 to did demand { acceptance }
 of the said bill; unto which demand he answered: ' '
 { payment }

Wherefore I, the said notary, at the request aforesaid, have
 protested, and by these presents do protest against the ac-
 ceptor, drawer and endorsers (or drawer and endorsers) of
 the said bill and all other parties thereto or therein concerned,
 for all exchange, re-exchange, costs, damages and interest,
 present and to come for want of { acceptance } of the said bill.
 { payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public

53 V., c. 33, sch., form C.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PRO-
TESTED FOR NON-ACCEPTANCE.

*If the protest is made by the same notary who noted the
 bill, it should immediately follow the act of noting and memo-
 randum of service thereof, and begin with the words 'and
 afterwards on, etc.' continuing as in the last preceding form.
 but introducing between the words 'did' and 'exhibit' the word*

'again,' and in a parenthesis, between the words 'written' and 'unto,' the words: 'and which bill was by me duly noted for non-acceptance on the day of ,'

But if the protest is not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words 'written' and 'unto,' the words: 'and which bill was on the day of , by , notary public for the province of , noted for non-acceptance, as appears by his note thereof marked on the said bill.'

53 V., c. 33, sch., form D.

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(*Copy of Note and Endorsements.*)

On this day of , in the year 19 , I
 A. B., notary public for the province of , dwelling
 at , in the province of , at the request of
 , did exhibit the original promissory note, whereof
 a true copy is above written, unto the promisor,
 personally (*or*, at his residence, office or usual place of busi-
 ness in , and speaking to himself (*or* his wife, his
 clerk or his servant, etc.) did demand payment thereof; unto
 which demand (he) answered: '
 (she)

Wherefore I, the said notary, at the request aforesaid, have
 protested, and by these presents do protest against the promis-
 sor and endorsers of the said note, and all other parties thereto
 or therein concerned, for all costs, damages and interest, pre-
 sent and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form E.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

** (Copy of Note and Endorsements.)*

On this day of , in the year 19 , I,
 A.B., notary public for the province of , dwelling at
 , in the province of ,
 , at the request of ,
 , did exhibit the original promissory note,
 whereof a true copy is above written, unto
 the promisor, at , being the stated place where the
 said note is payable, and there, speaking to did
 demand payment of the said note, unto which demand he
 answered:

Wherefore I, the said notary, at the request aforesaid, have
 protested, and by these presents do protest against the pro-
 misor and endorsers of the said note, and all other parties
 thereto or therein concerned, for all costs, damages and in-
 terest, present and to come, for want of payment of the said
 note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form F.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-
ACCEPTANCE, OR OF A PROTEST FOR
NON-PAYMENT OF A BILL.*(Place and Date of Noting or of Protest.)*

1st.

To P.Q. (*the drawer*)
 at

Sir,

Your bill of exchange for \$, dated at
 the day of upon E.F., in favour of C.D., payable days
 after { sight } date was this day, at the request of

duly { noted } by me for { non-acceptance |
 protested } non-payment |
 A. B.,

Notary Public.

(Place and Date of Noting or of Protest.)

2nd.

To C.D., (endorser)
 (or F.G.)

at

Sir,

Mr. P.Q.'s bill of exchange for £ _____ dated at the day of _____, upon E.F., in your favour (or in favour of C.D.,) payable days after sight, and by you endorsed, was this day at the request of _____ duly noted { |
 protested } by me for { non-acceptance |
 non-payment }
 A. B.,

Notary Public.

53 V., c. 33, sch., form G.

FORM H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(Place and Date of Protest.)

To

at

Sir,

Mr. P.Q.'s promissory note for £ _____, dated at _____, the day of _____ payable { days | months } after date to on _____
 { you | } or order, and endorsed by you, was this day, at the request of _____ duly protested by me for non-payment.

A. B.

Notary Public.

53 V., c. 33, sch., form H.

FORM I.

NOTARIAL SERVICE OR NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR NOTE.
(to be subjoined to the Protest.)

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-acceptance or non-payment of the bill or note thereon protested upon P.Q., the drawer personally, on the day of (or, at his residence, office or usual place of business) in , on the day of ; (or, by depositing such notice, directed to the said C.D., at , in His Majesty's post office in on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

53 V., c. 33, sch., form I.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(Copy of a Bill or Note and Endorsements.)

On this day of , in the year 19 , I, N.O., one of His Majesty's justices of the peace for the district (or county, etc.), of , in the province of , dwelling at (or near) the village of , in the said district, there being no practising notary public at or near the said village (or any other legal cause), did, at the request of and in the presence of

well known unto me, exhibit the original
 $\left\{ \begin{array}{l} \text{bill} \\ \text{note} \end{array} \right\}$ whereof a true copy is above written unto P.Q., the
 drawer
 $\left\{ \begin{array}{l} \text{acceptor} \\ \text{promisor} \end{array} \right\}$ thereof, personally (or at his residence, office or
 usual place of business) in _____ and speaking
 to himself (his wife, his clerk or his servant, etc.,) did demand
 $\left\{ \begin{array}{l} \text{acceptance} \\ \text{payment} \end{array} \right\}$ thereof, unto which demand $\left\{ \begin{array}{l} \text{he} \\ \text{she} \end{array} \right\}$ answered:
 Wherefore I, the said justice of the peace, at the request
 aforesaid, have protested, and by these presents do protest
 against the $\left\{ \begin{array}{l} \text{drawer and endorsers} \\ \text{promisor and endorsers} \\ \text{acceptor, drawer and endorsers} \end{array} \right\}$ of the said
 $\left\{ \begin{array}{l} \text{bill} \\ \text{note} \end{array} \right\}$ and all other parties thereto and therein concerned,
 for all exchange, re-exchange, and all costs, damages and in-
 terest, present and to come, for want of $\left\{ \begin{array}{l} \text{acceptance} \\ \text{payment} \end{array} \right\}$ of the
 said $\left\{ \begin{array}{l} \text{bill} \\ \text{note} \end{array} \right\}$

All which is by these presents attested by the signature of
 the said (*the witness*) and by my hand and seal.

(Protested in duplicate)

(Signature of the witness)

(Signature and seal of the J.P.)

56 V., c. 33, sch., form J.

CHAPTER 120.

An Act respecting Interest.

1. Short Title.—This Act may be cited as the Interest Act.

RATE OF INTEREST.

2. No Restriction as to Rate Except as Provided by Statute.

—Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon. R. S., c. 127, s. 1.

3. Except as to liabilities existing immediately before the seventh day of July, one thousand nine hundred, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be **five per centum per annum**. R. S., c. 127, s. 2; 63-64 V., c. 29, s. 1.

4. Except as to mortgages on real estate, **whenever any interest is**, by the terms of any written or printed contract, whether under seal or not, **made payable at a rate or percentage per day, week, month**, or at any rate or percentage for any period less than a year, **no interest exceeding the rate or percentage of five per centum per annum shall be chargeable**, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which such other rate or percentage is equivalent. 60-61 V., c. 8, ss. 2 and 4; 63-64 V., c. 29, s. 1.

5. If any Sum is Paid on Account of any interest not chargeable. payable or recoverable under the last preceding section, **such sum may be recovered back or deducted from any principal or interest payable under such contract.** 60-61 V., c. 8, s. 3.

INTEREST ON MONEYS SECURED BY MORTGAGE ON REAL
ESTATE.

6. No Interest Recoverable.—Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half yearly, not in advance. R.S., c. 127, s. 3.

7. No Rate Recoverable Beyond that so Stated.—Whenever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shown in such statement. R.S., c. 127, s. 4.

8. No Fine or Penalty or Rate of Interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage of real estate, which has the effect of increasing the charge on any such arrears beyond the rate of interest payable on principal money not in arrear: Provided that nothing in this section contained shall have the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrear. R.S., c. 127, s. 5.

9. Overcharge may be Recovered Back.—If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under the three sections last preceding, such sum may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal. R.S., c. 127, s. 6.

10. No Further Interest Payable After Five Years.—Whenever any principal money or interest secured by mort-

gage of real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem the mortgage tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under the provisions of the four sections last preceding, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage: Provided that nothing contained in this section shall apply to any mortgage upon real estate given by a joint stock company or other corporation, nor to any debenture issued by any such company or corporation, for the payment of which security has been given by way of mortgage on real estate. R. S., c. 127, s. 7; 53 V., c. 34, s. 1.

11. Apply to Mortgages Since July 1, 1880.—The provisions of the five sections last preceding shall apply only to moneys so secured by mortgage executed after the first day of July, one thousand eight hundred and eighty. R. S., c. 127, s. 8.

BRITISH COLUMBIA, SASKATCHEWAN AND ALBERTA AND THE TERRITORIES.

12. Application.—The three sections next following apply to the provinces of British Columbia, Saskatchewan and Alberta and to the Northwest Territories and the Yukon Territory only. 52 V., c. 31, s. 1; 57-58 V., c. 22, s. 1.

13. Every judgment debt shall bear interest at the rate of five per centum per annum until it is satisfied. 52 V., c. 31, s. 2; 57-58 V., c. 22, s. 2; 63-64 V., c. 29, s. 1.

14. From What Time Calculated.—Unless it is otherwise ordered by the court, such interest shall be calculated from the time of the rendering of the verdict or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in

the same court or in appeal. 52 V., c. 31, s. 3; 57-58 V., c. 22, s. 3.

15. Judgment Debt Defined.—Any sum of money or any costs, charges or expenses made payable by or under any judgment, decree, rule or order of any court whatsoever in any civil proceeding shall for the purposes of this Act be deemed to be a judgment debt. 52 V., c. 31, s. 4; 57-58 V., c. 22, s. 4.

INDEX.

The numbers refer to the sections of the Act.

	SECTION.
ABROAD , bill dishonoured abroad, amount of re-exchange can be recovered in addition to all other damages.....	136
ABSOLUTELY AND UNCONDITIONALLY RENOUNCING if at or after maturity, holder so renounces his rights against the acceptor, the bill is discharged.....	142
such a renunciation must be in writing, or the bill be delivered up	(3) 142
ACCEPTANCE , date of, shall be deemed the true date.....	29
of a bill payable at a fixed period after sight, and bill not dated, any holder may insert true date of acceptance....	30
meaning of	(2a) 35
what is an acceptance under the statute	35
where drawee's name is wrong or misspelt he may accept in his right name or in the name of the bill	35
invalid, unless it complies with certain conditions.....	36
it must be written on the bill, and signed by drawee..... (2) 36	36
signature of drawee to, is sufficient	(2) 36
must not express that drawee will perform his promise otherwise than by payment of money	(b) 36
when it may be given	37
bill overdue or dishonoured, may be accepted..... (2) 37	37
is either general or qualified	38
what is a general acceptance	(2) 38
what is a qualified acceptance	(3) 38
when qualified as to condition	(3a) 38
is partial, when it is to pay part only of amount mentioned in bill	(3b) 38
when qualified as to time	(3c) 38
when qualified by some one or more of drawees..... (3d) 38	38
at a particular place is not a conditional or a qualified acceptance	(4) 38
when qualified as to place	(4) 38
when it becomes complete and irrevocable.....	39
notice of, is equivalent to delivery of bill.....	39
in order to fix maturity in bill payable at or after sight, presentation for acceptance is necessary	75
when presentment for acceptance must be made before presentation for payment	75
presentment for, must be made by holder of bill payable after sight, within reasonable time.....	77
effect of not presenting for	(2) 77
when a bill is said to be presented for acceptance.....	78
when it is refused, on some other ground than irregular presentation, presentation for acceptance is excused.....	79
presentment for, is not excused because holder has reason to believe that bill would be dishonoured..... (2) 79	79
two days allowed after presentation for, that bill may be honoured	80

ACCEPTANCE. <i>Continued.</i>	SECTION.
effect of not treating the bill as dishonoured after two days after presentation for acceptance	80
when a bill is said to be dishonoured for non-acceptance	81
a qualified acceptance may be refused	82
holder is entitled to an unqualified acceptance	83
when holder takes a qualified acceptance, without authority, drawer or endorser is discharged from bill	84
partial acceptance is not treated as qualified acceptance, when due notice is given	85
when no place of payment is mentioned, presentation for pay- ment not necessary to make acceptor liable	93
when specific place of payment mentioned, omission to pre- sent bill thereat, does not discharge acceptor	93
notice of non-acceptance, when, and to whom it should be sent	96
is given of a foreign bill as to part, it must be protested as to balance	112
when it is <i>materially</i> altered without assent of all parties, what the effect is	145
of bill drawn in set, how it must be written	158
of bill in one country, when drawn in another country, how rights, duties, etc., of parties determined	161
provisions as to, and to presentment inapplicable to notes ..	186
 ACCEPTANCE FOR HONOUR , what is meant by acceptance for honour supra protest	147
for part only	148
when it does not state for whose honour, it is deemed an ac- ceptance for honour of drawer	149
of a bill payable after sight, maturity is calculated from date of protest for non-acceptance, not from date of acceptance for honour	150
 ACCEPTEOR who accepts bill when overdue makes bill payable on demand, as against him accepting	23
signature of, on a blank paper delivered by signer to be filled up as bill, may be used as signature of acceptor	31
when he may accept	37
contract of, in a bill, incomplete and revocable until delivery giving notice of acceptance equivalent to delivery	39
when bill no longer in his possession delivery is presumed ..	41
who may be such	47
not liable on bill unless he has signed it as such	49
who signs bill, adding words indicating his acting for prin- cipal, or in representative capacity, is not personally liable, but different if words added were words of identity	52
if at any time value be given, the holder is holder for value as against acceptor	54
to whom bill is negotiated back, may reissue and negotiate, the effect of	73
but acceptor reissuing and negotiating, cannot enforce pay- ment against intervening party	73
to make him liable not necessary to present for payment, when no place of payment is mentioned	93
to make him liable not necessary to protest bill	109
holder may, before maturity, protest bill for better security, person accepting, what he thereby engages, his position generally, and liability	128
drawer may enforce payment against acceptor of bill payable to order of third party	140
rights against, preserved by endorser who pays the bill ..	140
when he becomes holder of a bill, at or after maturity, in his own right, the bill is discharged	141

ACCEPTOR—Continued.	SECTION.
renunciation must be in writing or bill delivered up.....(3)	142
who pays part of a bill drawn in set, other than the part he accepted, and latter part in hands of holder in due course, he is liable to such holder	(4) 159
ACCEPTOR FOR HONOUR , when his address and place where bill presented for non-payment are in the same place, bill must be presented to acceptor for honour not later than day after maturity	94
course to pursue, when address and place, etc., is not same place	(2) 94
what delay operates as an excuse for non-presentation to (3) bill accepted <i>supra</i> protest, before being presented to acceptor must protest for non-payment.....(2)	94
if he does not pay, when bill presented to him, it must be protested for non-payment by him.....(2)	117
to whom he is liable	172
ACCOMMODATION , when bill accepted for party's accommodation such party not entitled to notice of dishonour by non-payment	108
payment of bill by accommodation party, discharges the bill	(3) 139
ACCOMMODATION PARTY , who is such	55
when and to whom liable	(2) 55
ACT , how cited	1
Imperial not in force	9
ACTION , meaning of	(b) 2
in any action protest <i>prima facie</i> evidence of presentation and dishonour and of service of notice.....11,	12
right of, for recovery back of moneys paid on cheque with forged endorsement, barred, unless notice of forgery given drawee within one year from discovery of forgery.....(b)	19
in action upon bill, burden of proof as to being <i>prima facie</i> holder in due course, shifted by proving fraud, etc., etc. (2)	58
holder of a bill may bring such in his own name.....(a)	74
on a lost bill, Court may order that loss be <i>not</i> set up, if indemnity be given	157
ACTUAL KNOWLEDGE that bill given for usurious consideration can alone render void in hands of holder.....	59
ADDITION of words creating and relieving persons signing from personal liability	52
of place of payment to a bill accepted generally is a material alteration	(d) 146
ADDRESS , when presentment for payment should be at address of acceptor or drawee.....	88
See <i>Acceptor for Honour</i>	117
ADMISSION of fraud, etc., shifts <i>onus</i> of proof that holder is holder in due course	(2) 58
AGENT of bank, when he must not act as notary.....	13
signing by procuration, gives notice that he has but limited authority	51
signing by procuration only binds principal if acting within actual limits of his authority	51

AGENT— <i>Continued.</i>	SECTION.
signing and adding words creating and relieving him from personal liability	52
rule for determining whether signature that of principal or agent(2)	52
may give notice of dishonour in his own name or name of any party entitled to give notice(1)	98
notice of dishonour may be given to agent in that behalf.(b) in whose hands bill is, when dishonoured, may give notice to parties, or to his principal, effect of giving notice to principal	98
of holder may cancel bill, and bill discharged	100
of holder may discharge liability of any party by intentionally cancelling signature(2)	143
for payer for honour may make declaration for material act of honour	154
bank as agent for collection of crossed cheques. 169, 171, 172, 173	173
 ALLONGE , endorsement on, when sufficient.....(2)	 62
 ALTERATION in bill or acceptance, effect of and result from., when not apparent, holder in due course, may avail himself as if no alteration	 145
what are material alterations in particular.....	145
146	
 AMOUNT .—See <i>Authority</i> .	
 ANTECEDENT DERT is sufficient to constitute a valuable consideration for a bill	53
 ANTECEDENT PARTIES , rights against preserved by indorser who pays bill	140
 ANTE DATED bill so dated is not for that reason invalid	27
 ASSENT , signification of, by drawee to order or drawer acceptance of bill	35
to qualified acceptance, deemed to have been given unless after notice of same, drawer or indorser dissents within reasonable time	83
subsequent assent to holder taking qualified acceptance binds party so assenting	84
assent of endorser to demand note being held as collateral security dispenses with necessity of usual presentment for payment	181
 ASSIGNMENT of funds in hands of drawee available for payment of bill not constituted by bill itself	127
 ASSUMED NAME , person signing in assumed name liable as if signing in his own name	123
 AUTHORITY , one person may sign the signature of another under authority	4
authority to fill up as a bill, a blank paper with signature delivered by signer to be so filled up	31
person in possession of bill <i>prima facie</i> has authority to fill in omission	31
signature to blank paper, delivered by signer to be converted into bill operates as authority to fill up for any amount.. though not strictly followed, matters not, when instrument after completion negotiated in hands of holder in due course	32
and capacity of parties	47

AUTHORITY— <i>Continued.</i>	SECTION.
an unauthorized signature not amounting to forgery may be ratified	(a) 49
name signed to bill, without authority, effect of in agent signing by procuration indicated to be a limited authority	49
when bill payable to two or more not partners all must endorse unless one endorsing has authority.....	51
to deal with bill as thereby directed makes endorsement restrictive	63
if without authority holder takes qualified acceptance drawer or endorser is discharged.....	68
may be express or implied or may be subsequent to taking qualified acceptance	84
when authority deemed to exist(2) 82,	84
cancellation of signature without authority is inoperative..	144
to hold note and sell or dispose of it as collateral security, does not prevent instrument from being a note.....(3)	176
 BANK, meaning of	(c) 2
<i>see Cheque.</i>	
officer not to act as notary	13
duty and authority of, to pay cheque, how terminated	167
difference between word "Bank" and the addition of the name of the bank in crossed cheque.....	168
when bank may cross cheque	169
when bank may refuse payment of crossed cheque.....	171
when bank paying cheque is liable to true owner of same..	172
paying crossed cheque in good faith, etc., not liable.....	172
when bank paying crossed cheque entitled to position of having paid it to true owner	173
receiving payment of crossed cheque in good faith, etc., for customer who has no title, not responsible to true owner from simply having received the money.....	175
 BANKING ACT, not affected	8
 BEARER, meaning of	(d) 2
when a bill is payable to bearer.....(3)	21
payee must be named or otherwise indicated with reasonable certainty	20
a bill payable to, is negotiable by delivery.....(2)	21
note payable to, must be delivery in order to become complete	60
	178
 BILL, meaning of	(e) 2
 BILLS OF EXCHANGE ACT, how cited.....	1
 BILL OF EXCHANGE, when consideration for, in whole, or in part, the purchase money of, a patent right.....	14
transferee or endorsee of, takes same subject to equities....	15
person issuing, etc., patent right note, knowing it to be such without adding words "given for patent right," guilty of indictable offence	16
definition of	17
not an order other than payment of money.....(2)	17
not an order to pay out of particular fund.....(3)	17
unqualified order to pay though coupled with indication to reimburse out of particular fund, or to debit particular account or statement of transaction giving rise to bill, is valid	17
B.E. 5	

BILL OF EXCHANGE.—Continued.	SECTION.
the happening of the event, upon which bill payable, does not cure defect	18
to whom a bill of exchange may be addressed.....	18
not an order payable on a contingency	18
may be addressed to partners	(2)
not an order addressed to two drawees in alternative, or to two or more in succession.....	18
may be drawn payable to drawer or order, or to drawee or order	19
may be drawn payable to two or more payees jointly, or to one of two, or one or some of several.....	(2)
may be drawn payable to holder of an office.....	(3)
when bill contains words prohibiting transfer or indicating intention of being non-transferable, valid between parties, but not negotiable	21
may be drawn payable to order or bearer	(2)
when it is payable to bearer	(3)
payee must be named or indicated with certainty.....	(4)
when payee fictitious or non-existing may be treated as payable to bearer	(5)
when valid between parties, though not negotiable	22
when it is payable to order	22
when payable originally, or by endorsement to order of speci- fied person, same as if payable to him or his order.....	(2)
when it is payable on demand	(a)
when accepted when overdue, is payable on demand as against such acceptor	(2)
when payable at determinable time.....	23
when payable at sight or at a fixed period after.....	(a)
when payable at fixed period after specified event.....	(b)
definition of an inland bill	25
other bills are foreign	(2)
when it may be treated as a promissory note	25
when drawee fictitious holder may treat bill as promissory note	26
not invalid, because not dated, nor value specified, nor place where drawn or payable, mentioned	27
not invalid, because <i>ante</i> dated, or <i>post</i> dated, or dated on Sunday, or non-juridical day	27
when the sum payable by, is a sum certain within the Act ..	28
when sum payable expressed in figures and in words, and discrepancy, sum expressed by words governs.....	(2)
from whence interest runs, when bill dated and not dated ..	(3)
the date shall be deemed true date	29
when payable at fixed period after date and undated, any holder may insert true date of issue	30
when accepted at fixed period after sight, and undated, shall be payable to any holder in due course on true date of acceptance	(b)
a blank paper with signature, delivered to be converted into a bill negotiated after completion to "holder in due course" valid for all purposes in his hands	31
how blank paper operates having signature of signer and by him delivered to be converted into a bill	31
when omission in bill may be filled in by person in possession	31
when wanting in any material particular	31
though not filled up within reasonable time, or strictly ac- cording to authority, yet enforceable by holder in due course	32
when enforceable against prior parties	32
drawer or endorser of, may insert name of referee to whom holder may resort in case of need	33

BILL OF EXCHANGE—*Continued.*

	SECTION.
drawer may insert stipulation negativing or limiting his liability, etc	34
may waive some or all of holder's duties	34
what is acceptance of	35
when drawee's name mis-spelt, or he is wrongly designated, course which may be taken	(2) 35
when bill may be accepted	37
if sight bill, and subsequently accepted, holder entitled to have acceptance as of date of first presentment	(2) 37
when acceptance is general	(2) 38
when acceptance is qualified	(3) 38
when acceptance is partial	(3b) 38
when qualified as to time	(3c) 38
when qualified as to condition	(3a) 38
when qualified as to place	(4) 38
when acceptance of one or more drawees makes acceptance qualified	(3d) 38
contract or bill, incomplete and revocable until delivery of instrument, to give effect thereto	39
where acceptance becomes complete and irrevocable	39
delivery of, may be shewn to be conditional or special	40
what amounts to delivery of, as between immediate parties and as regards remote parties	40
when in hands of "holder in due course," a valid delivery is presumed	40
when no longer in possession of drawer, acceptor, or endorser, delivery is presumed	41
computation of time	42
last day of grace	42
non-juridical days	43
provincial proclamation	(e) 43
what are legal holidays	43
what are non-juridical days	43
time of payment	44
how to compute time, when same is payable	45
sight bill	45
sight bill	45
due date	46
month	(2) 46
rules for determining when bill, not payable on demand, falls due	46
who may be parties to	47
when and how corporations may be parties to	47
effect of being drawn by infant, minor, or by corporation without power, as against other parties	48
effect of forged signature, or signature without authority	49
forged signature cannot be ratified	49
unauthorized signature may be ratified	(a) 49
money recovered from one person gives him like rights to recover the same from any prior endorser subsequent to the forgery	50
notice of forged endorsements	(2) 49. (3)
recovery of amount paid on forged endorsements	(b) 49
signature by procuration operates as notice of limited authority in agent	50
person signing and adding words indicative of his so doing in behalf of another, or in a representative capacity, is not personally liable	51
mere words of identification, however, do not relieve him from personal liability	52
rule in determining whether signature that of principal or agent	(2) 52
consideration for	52
payable on demand, or at a future time, an antecedent debt or liability, valuable consideration for	53
	53

BILL OF EXCHANGE—Continued.	SECTION.
form of bill	(2)
value once given for, then holder is holder for value as regards all prior parties	53
when holder has a lien on it	54
who is an accommodation party to a bill	55
when and to whom accommodation party is liable on bill (2)	55
who is holder of, in due course	56
when title of person who negotiates a bill is defective (2)	56
when a holder without value may be a holder in due course, party whose signature is to bill is <i>prima facie</i> a party for value	57
every holder is <i>prima facie</i> a holder in due course	58
burden of proof	58
when such is valid as given upon a usurious consideration ..	59
when bill said to be negotiated	60
when bill is payable to bearer	60
when bill is payable to order	(3)
when holder transfers bill without endorsing he gives transferee his title	61
person endorsing such a representative capacity may so endorse as to negative personal liability	(2)
endorsement of, to operate as negotiation, must comply with certain conditions	61
endorsement must be of entire bill	62
partial endorsement does not negotiate the bill	(3)
payable to two or more not partners, all must endorse, unless the one endorsing has authority	62
simple signature sufficient	63
when acceptance specifies place and presentation omitted therat on day of maturity, acceptor not thereby released. (2)	63
misspelling payee's name	64
when two or more endorsements, order in which endorsements deemed to have been made	65
when endorsement is conditional, condition may be disregarded, and payment to endorsee valid, whether condition performed or not	66
endorsement of, may be in blank or special	67
how a bill endorsed in blank may be converted into a bill with special endorsement	67
what is a blank endorsement of	(2)
when endorsed in blank, bill payable to bearer	(2)
what is a special endorsement of	(3)
what is a restrictive endorsement of	68
endorsee under restrictive endorsement, may sue any party that his endorser could have sued, but cannot transfer. (3)	68
when restrictive endorsement authorizes further transfer, all subsequent endorsee take bill with same rights, etc., as first endorsee under such endorsement	68
when negotiable in its origin, continues so to be until restrictively endorsed or paid, etc.	69
when overdue can be negotiated, but subject to equities affecting it at its maturity	70
person taking overdue bill, can only give or acquire such title as person had from whom he got it	70
when a bill payable on demand is deemed to be overdue, (2)	70
endorsement of, <i>prima facie</i> before overdue, except when dated after maturity	71
not overdue and dishonoured person taking it with notice does so subject to defects in title at time of dishonour	72
negotiated back may be re-issued and further negotiated with certain restrictions	73
rights and powers of holders of	74

BILL OF EXCHANGE—Continued.**SECTION.**

holder of, in due course holds free from any defect of title of prior parties and from personal defences assailable to prior parties	(d) 74
negotiation of bill, by person in due course, holder gets good title even though the title of person from whom he received the bill was defective	(e) 74
payment of, by person in due course, discharges such person from all liability, even though title of person to whom money paid be defective	(d) 74
payable at sight, must be presented for acceptance to fix time of maturity	75
when a bill must be presented for acceptance before it can be presented for payment	(2) 75
when only presentation for acceptance is necessary	(3) 75
when time lost in presenting for acceptance is excused,.....	76
holder of, for sight must present for payment or negotiate bill within reasonable time	77
effect of not doing so	(2) 77
what is reasonable time	(3) 77
rules governing presentation for acceptance	78
by holder to drawee	(a) 78
to all drawees when more than one who are not partners (b)	78
where drawee is dead	(c) 78
through post office	(d) 78
when presentation for acceptance excused, and bill to be treated as dishonoured for want of acceptance	79
two days allowed after presentation within which to honour bill by acceptance	80
effect of not treating bill as dishonoured, if not honoured within two days after presentation	(2) 80
holder loses right of recourse against drawer or endorser (3)	80
where bill is dishonoured by non-acceptance	(5) 80
where bill dishonoured an immediate right of recourse accrues to holder	82
a qualified acceptance of, may be refused and bill dishonoured by non-acceptance	(5) 80
when qualified acceptance taken without authority drawer or endorser discharged	84
when qualified acceptance is given, the drawer or endorser bound thereby after notice, unless he dissents within a reasonable time	(2) 84
must be presented for payment	84
effect of not presenting for payment	(2) 85
manner of presenting for payment	(3) 85
rules governing presentation for payment	86
payable on demand, when it must be presented for payment	86
what is reasonable time	(2) 86
presentment of, for payment, by whom to be made	87
where presentment must be made	(2) 87
when drawee or acceptor dead, and no place of payment mentioned, presentment must be to personal representative (3)	87
when it is presented at proper place	88
when presentment may be made at post office	89
delay in making presentment, when excused	91
when delay ceases, bill must then be presented within reasonable time	(2) 91
when presentment for payment is dispensed with	92
fact of holder having reason to believe that bill will be dishonoured, does not dispense with necessity of presentment for payment	(2) 92
when no place of payment mentioned, presentment not necessary in order to make acceptor liable	93

BILL OF EXCHANGE— <i>Continued.</i>	SECTION.
holder of, when presenting for payment must exhibit it and deliver it up when paid	(3) 93
time for presentation	94
parties in different places	(2) 94
when presentation for payment is excused	89, (3) 94
excuse for delay in presentation	(3) 94
when bill is dishonoured for non-payment	95
when dishonoured by non-payment	95
when so dishonoured immediate right of recourse accrues to holder	(2) 95
when dishonoured by non-acceptance or non-payment, notice of dishonour must be given, to whom, and when	96
<i>See Notice of Dishonour.</i>	
when dishonoured and returned to drawer or endorser it is sufficient notice of dishonour	99
when notice of dishonour by non-payment is dispensed with	106, 107, 108
not necessary to protest or send notice to acceptor to make him liable	109
a foreign bill dishonoured by non-acceptance or non-payment when foreign bill is accepted as to part, it must be protested as to balance	112
an inland bill dishonoured may be noted and protested for non-acceptance or non-payment as holder thinks fit ..	100, 113, 114
when not appearing a foreign bill, protest in case of dishonour unnecessary	112, (2) 114
protested for non-acceptance, may be protested for non-payment	115
when may protest bill for better security	116
accepted for honour supra protest, must be protested for non-payment, before presented for payment to acceptor ..	117
containing a reference in case of need, must be protested for non-payment before it is presented for acceptance to referee in case of need	117
when it should be presented to acceptor for honour	117
when presented to acceptor for honour, and payment refused, must be protested for non-payment by him	(2) 117
when protested, the protest must be made or noted on day of dishonour	119
when noted, protest may be extended as of day of noting (2) 119	119
when lost, destroyed, or accidentally, or wrongly detained protest may be on copy or written particulars	120
where a bill must be protested	121
copy of, may be attached to protest in place of original .. (2)	125
does not operate as an assignment of funds in hands of drawee available for payment thereof	127
what acceptor of bill engages, his position generally and liabilities	128, 129
what drawer of bill engages, his position generally and liabilities	130, 131
no person is liable unless he signs as such	131
person signing otherwise than as acceptor or drawer becomes liable in same way as endorser	131
drawer, endorser, or acceptor not liable on, unless signing as such	131
person signing in trade, or assumed name, liable as if signing his own name	132
signature of name of firm equivalent to signature by person signing, of names of all persons in firm	(2) 132
what endorser of bill engages, his position generally and liabilities	133

BILL OF EXCHANGE— <i>Continued.</i>	SECTION.	
when dishonoured, what are the measure of damages and what may be recovered	134	
when dishonoured, who may recover, from whom and what damages	135	
dishonoured abroad, holder may recover in addition to all other damages, amount of reexchange and interest	136	
holder of bill payable to bearer, negotiating by delivery without endorsing is transfer by delivery	137	
not liable on by transfer by delivery	(2)	137
transfer by delivery warrants	138	
discharge of, by payment	139	
"payment of, in due course," what is meant therby	(2)	139
payment of, by accommodation party discharges bill	(3)	139
not discharged when paid by drawer or endorser	140	
payable to order of third party, when paid by drawer he may enforce payment against acceptor, but cannot reissue	(a)	140
when paid by endorser, or in case of bill payable to drawer's order, party paying bill may strike out his own endorsement and again negotiate bill	(b)	140
is discharged by acceptor becoming holder of, in his own right at or after maturity	141	
is discharged, when holder renounces his right against acceptor	142	
liability of any party on, may be renounced by holder	(2)	142
when discharged by cancellation	143	
holder of, or his agent may discharge any party to, by intentionally cancelling his signature	(2)	143
cancellation of, without authority inoperative	144	
when cancelled, burden of proof to contrary rests on him asserting the contrary	144	
when materially altered, effect of, and result from	145	
when materially altered, but alteration not apparent, holder in due course may avail himself as if no alteration made	145	
what are material alterations in particular	146	
who may intervene and accept for honour and when	147	
may be accepted for honour for part only	148	
when not stated for whose honour it is deemed for honour of drawer	149	
bill payable after sight maturity is calculated on from date of protest for non-acceptance	150	
requirements of an acceptance for honour supra protest	151	
acceptor for honour of, what he engages and to whom he is liable	152	
when protested for non-payment, any one may intervene, and pay supra protest	153	
when two or more persons offer to pay bill, who is preferred	(2)	153
effect of holder of bill refusing payment supra protest	(3)	153
payee for honour entitled to bill	(4)	153
if holder refuses to give up bill is liable to payee for honour	(5)	153
notarial act of honour necessary to payment supra protest	154	
what notarial act of honour must contain	(2)	154
who discharged by payment for honour, and rights of payer for honour	155	
when lost, holder may demand another bill from drawer	156	
drawn in set	158	
how acceptance of bill in set written	(2)	158
when drawn in set, and holder endorses each part, he is liable on each part	159	
endorser only liable on part of bill in a set he has himself endorsed	159	

BILL OF EXCHANGE—Continued.	SECTION.
when parts of a set negotiated to different holders in due course, holder whose title first accrues deemed the true owner	(1) 159
rights of person who in due course accepts or pays part first presented are protected	(2) 159
If drawee accepts different parts, he is liable on each part in hands of different holder	(3) 159
acceptor of bill in set, who pays part not bearing his acceptance, may have to pay other part on maturity	(4) 159
when one part of a bill drawn in set is paid the whole is discharged	(5) 159
drawn in one country, negotiated, accepted or payable in another, how rights, etc., of parties are determined	160
issue out of Canada not invalid, because not stamped according to law of country of issue	(a) 160
issued out of Canada, conforming to law of Canada can be enforced against all parties becoming parties to it in Canada	(b) 160
interpretation of, according to law of country wherein contract made	161
inland bill endorsed in foreign country interpreted according to laws of Canada	161
laws as to duties of holder	162
drawn out of, but payable in Canada and amount not stated in Canadian currency, how calculated	163
drawn out of one country, payable in another, how due date is determined	164
 BLANK ENDORSEMENT, endorsement may be in blank	67
what is a blank endorsement	(1) 67
how it may be converted into a special endorsement	(2) 67
 BLANK PAPER, signature on such delivered by signer to be converted into bill, how operates	31
 BURDEN OF PROOF, on whom it is to show that holder is holder in due course	58
that cancellation of bill unintentional rests on him so asserting	144
 BUSINESS DAYS, what are	(1) 2
 CALENDAR MONTH, what is meant	(2) 46
 CANADA, note made in, is an inland note, all others foreign, ...	25
bill drawn in, negotiated payable or accepted in foreign country, how rights of parties are determined	160
bill issued out of, not invalid because not stamped according to law of that country	(a) 160
bill issued out of, conforming to laws of Canada, valid as between parties to it in Canada	(b) 160
law of Canada governs, so far as endorsement in foreign country is concerned upon an inland bill	161
See <i>Currency of Canada</i> .	
 CANCELLATION of bill, to be effective, must be apparent thereon, and must be intentional before bill is discharged	143
effect of, so far as endorser and others are concerned	143
by mistake, or unintentionally, is ineoperative	144
when alleged to be unintentional, etc., burden of proof rests on him so asserting	144

	SECTION.
CANCELLATION C canceling sign	SIGNATURE. Any holder or agent, by " may discharge party to bill 143
CAPACITY to conti treat bill as pre and authority of parties to incur liability, coextensive with capacity to contract representative to contract, when drawee has not capacity to contract, presentation for acceptance excused rule for determining	cant of, in drawee entitles holder to 26 47 47 52 (2) 32
CAUSE OF DELAY when it ceases, then bill must be presented with reasonable diligence	(2) 91
CERTAIN , when a sum is	28
CERTAINTY , drawee must be named in bill with reasonable 20, (4) 21	
CHEQUE , forged endorsement on, when paid by drawee, effect of (b) 49 held to be paid in "due course," unless proceedings taken within one year from discovery of forgery (b) 49 on a bank, what it is 165 provisions of act applicable to bills of exchange, applies to cheques (2) 165 effect of, not presenting within reasonable time 166 how question of what is reasonable time is determined, (2) 166 when holder of cheque becomes a creditor of bank in which cheque drawn in lieu of drawer (b) 166 how duties of bank to pay cheque drawn on it are deter mined 167 law as to crossed cheques 168 what constitutes a crossing and cheque crossed generally 168 what constitutes a crossing and cheque crossed specially (2) 168 may be crossed generally or specially 169 where holder may cross cheque generally or specially (2) 169 when crossed generally holder may cross specially (3) 169 when crossed generally or specially holder may add words "not negotiable" (4) 169 when crossed specially, bank may again cross specially to another bank for collection (5) 169 when not crossed, or crossed generally, bank may cross it specially to itself (6) 169 how a cheque may be reopened or uncrossed (7) 169 crossing authorized is material part of cheque 170 unlawful for any one to obliterate, add to, or alter cros sing (2) 170 when crossed specially to more than one bank when bank may refuse payment 171 when bank paying a crossed cheque is liable to true owner 172 when bank paying crossed cheque in good faith is protected 172 when bank paying crossed cheque entitled to position of having paid it to true owner 173 person taking crossed cheque only gets and can only give title thereto of person from whom he got it 174 bank receiving payment of crossed cheque in good faith, etc., for customer who has no title thereto, incurs no liability from simply having taken money 175	
CIRCULATION , when a bill payable on demand, in circulation an unreasonable time, deemed to be overdue (2) 70	
CITED , how act may be	1

	SECTION.
CLERK IN BANK , when he must not act as notary	13
COLLATERAL SECURITY , circumstance of note being held as such, does not render invalid instrument as a note, ... (3) demand note being held as such need not be presented for payment so long as so held	176 181
COMMON law of England	10
COMPLETION , to hold party to instrument prior to its completion it must be filled up as bill within "reasonable time,"	32
COMPUTATION , of time when bill is payable..... of time, see <i>Time</i>	46 42
CONDITIONAL , acceptance, what it is when endorsement conditional, condition may be disregarded by payer and payment valid	(3a) 66
CONDITIONS , necessary to a bill of exchange, upon which a holder is a "holder in due course" certain conditions to endorsement necessary before endorsement operates as negotiation	17 29 31
CONFLICT , of laws	160 to 164
CONSIDERATION , when wholly or in part purchase money of patent right	14
a valuable consideration for a bill, what it is,.....	53
when person obtains bill by illegal consideration his title is defective	(2)
when bill given for usurious consideration void in hands of holder	56 59
CONSTRUCTION , most favourable to validity of instrument to be adopted in determining the character in which person signs	(2)
CONTINGENCY , instrument payable on, not a bill of exchange.	18
CONTINUING SECURITY , see <i>Collateral Security</i> .	
CONTRACT , on a bill incomplete and revocable until delivery of instrument	39
any consideration sufficient to support a simple contract is a valuable consideration for a bill,	(a)
holder having lien on bill by contract is holder for value to extent of lien	53 54
CONVERTED , blank page with signature delivered by signer to be converted into bill, when operates as such.....	31
COPY of bill or note may be attached to protest..... when endorsement on copy of bill sufficient	11. 12 125
CORPORATIONS , what required of, seal of, sufficient signature, but seal not made necessary, when they may be parties to a bill and how, bill, drawn by, not having power so to do, effect of in hands of holder as against other parties	5 5 47 47
COSTS , in discretion of Court, when bill sued on before presentation	93

	SECTION.
COUNTERMAND OF PAYMENT , terminates bank's duty and authority to pay cheque	176
COUNTRY , the law of, which determines rights of parties when bill drawn in one country payable in another.....	160, to 164
COURT , has discretion in costs, when bill sued upon before presentation	93
CROSSED CHEQUE , see <i>Cheque</i> . law of, applicable to warrants for payment of dividends.....	7
CROSSING , see <i>Cheque</i> .	
CURRENCY OF CANADA , when bill drawn out of but payable in Canada, and sum not stated in Canadian currency, how amount calculated	163
CUSTOMER , of bank dying, and notice of death to bank terminates authority to pay cheque	167
DAMAGES , what may be recovered when bill dishonoured and the measure of damages	134, 135,
amount of re-exchange recoverable on foreign bill	136
DATE , when bill payable at fixed period after date it is payable at a determinable future time	24
want of, in a bill of exchange does not render it invalid.....	27
day of date excluded in computing time when bill falls due, except when date of endorsement after maturity of bill each negotiation prima facie effected before bill overdue.....	44
alteration of, is a material alteration	71
of protest from whence maturity of bill payable after sight is calculated not date of acceptance for honour.....	(2) 143
See <i>Due Date</i> .	
DAY , when bill not payable on demand falls due.....	42
bill payable at month or months falls due on same numbered day as dated	46
DAY OF MATURITY , when stated on bill or acceptance omission to present thereat does not discharge acceptor.....	93
DAYS OF GRACE , what is last	42
three added where bill not payable on demand	42
bill payable on last	42
exceptions	42
when last day of grace a legal holiday or non-juridical holiday, the next day shall be last day of grace.....	42
DECLARATION , for notarial act of honour who may make it and what it is	(2) 154
DEFECT , notice of defect in title prevents holder being holder in due course	(b) 56
See <i>Title</i> .	
DEATH , notice shall not be invalid by reason of.....	(3) 130
DEFENCE , meaning of	(k) 2
DEFENCES , personal defences available to prior parties between themselves unavailable against holder in due course.	
(b) 71	

	SECTION.
DEFINITION , of a bill of exchange.....	17
of an inland bill	25
of a foreign bill	(2) 25
DELAY , in making presentment for payment, when excused.....	51
in sending notice of dishonour, when excused.....	105
in noting or protesting, when excused	116
when cause for delay ceases to operate, bill must be noted or protested with reasonable diligence.....	111
DELIVERED , blank paper with signature delivered by signer may operate as a bill	31
DELIVERY , meaning of	(6)
oral bill delivered, contract incomplete.....	39
what is effectual delivery as between immediate parties and as regards a remote party	40
in order to be effectual must be made with authority of drawer, drawee or endorser	(a) 40
may be shown to be conditional, or for special purpose, (b)	40
valid delivery in hands of holder in due course conclusively presumed	(2) 40
valid and unconditional delivery as against drawer, acceptor or endorser when presumed	41
a bill payable to bearer is negotiable by.....	(2) 60
necessary to complete negotiations of a bill payable to order	(3) 60
bill when paid must be delivered up by holder	(3) 93
transferred by, who is such	137
his liabilities and undertakings	138
of bill by holder to acceptor at or after maturity discharges bill	142
a promissory note is incomplete until delivered	178
DEMAND , when bill payable on	(a) 23
when <i>not</i> payable on demand, what day bill is determined to fall due	(2) 46
though bill payable on, antecedent debt or liability deemed valuable consideration therefor	53
when a bill payable on demand is deemed overdue	(2) 70
what is an "unreasonable time" is a question of fact	(3) 70
when bill <i>not</i> so payable presentment must be on day bill falls due	(a) 96
when bill so payable must be presented for payment	(b) 86
when a note payable on demand is endorsed, how soon it should be presented for payment	180
when demand note negotiated, holder not affected by defect in title, simply because not presented for payment within reasonable time after issue	182
DEMANDED , when payment of bill demanded, bill must be exhibited and delivered up on payment	(3) 85
"DETERMINABLE" future time," meaning of	24
DILIGENCE , after exercise of reasonable diligence	(b) 79
presentment cannot be effected	87
presentment is excused	(3) 87
reasonable diligence must be exercised in noting and pro testing bill	(2) 111
DISCHARGE of bill by payment	139
accommodation party paying bill discharges it	(1) 139
when acceptor becomes holder of bill	141

DISCHARGE—Continued.

	SECTION.
when bill is discharged by renunciation of holder.....	142
cancellation of bill to operate as discharge must be intentional and apparent on bill itself.....	143
of any party liable on bill by intentional cancellation of signature	(2) 143
when one part of a bill drawn in a set is paid generally whole bill is discharged	(5) 159

DISCRETION OF COURT can be exercised in regard to costs, when bill sued upon before presentation.....

93

DISHONOUR. notice of prevents holder from becoming holder in "due course"	(a) 56
holder believing that bill would be dishonoured does not excuse presentment	(2) 79
when bill may be treated as dishonoured by non-acceptance, and presentment excused	95
of an inland bill noting and protesting.....	113, 114

DISHONoured, when bill dishonoured for non-acceptance or non-payment holder may resort to "referee in case of need."	33
bill dishonoured may be accepted	(2) 37
if sight draft, holder entitled to have accepted as of date of first presentment	(2) 37
bill dishonoured not overdue, person taking it does so subject to defect in title attaching of time of dishonour.....	72
when bill is dishonoured for non-acceptance.....	81
when so dishonoured then immediate right of recourse accrues to holder	82
holder may refuse to take qualified acceptance and treat bill as dishonoured by non-acceptance.....	83
when bill dishonoured by non-payment, then immediate right of recourse accrues to holder	(2) 95
when dishonoured, notice of dishonour must be given to drawers and endorsers, etc.....	96
effect of not giving notice	(a) 96
when not necessary to give notice of subsequent dishonour by non-payment	(b) 96
bill dishonoured by acceptor for honour must be protested for non-payment by him	117
when foreign note dishonoured need not be protested, except to preserve liabilities of endorser	187

DISPENSING, with presentment for payment, when it can be done

92

with notice of dishonour, when it can be done.....

106

DISSENT to qualified acceptance must be expressed within reasonable time after notice, else assent deemed to be given

(2)

83

DIVIDEND, warrants for payment of, governed by law of crossed cheques

7

DRAWEE, a bill may be addressed to two or more, whether partners or not	18
bill may be drawn payable to, or order.....	19
must be named or indicated with reasonable certainty 20. (4) 21	21
when fictitious, holder may treat bill as promissory note	26
or when a person not having capacity to contract	26
signification by, of assent to order of drawer is acceptance of bill	35

DRAWEE. — <i>Continued.</i>	SECTION.
when name is wrongly designated or misspelt, may accept as in bill described, or by proper signature.....(2)	35
his signature sufficient without additional words.....	36
in accepting bill must not express his promise by any other means than payment of money	36
may accept a bill though incomplete or not signed by drawer	37
acceptance of one or more, but not all, makes acceptance qualified	38
giving notice of acceptance to person entitled to bill or ac- cording to latter's direction acceptance then complete and irrevocable, though bill not delivered.....	39
who may be such	47
of cheque with forged endorsement, paying same will be held to have paid it in due course, unless notice given within one year of forgery.....	49
 DRAWEES, when two or more not partners, when presentment for acceptance must be to all	78
same when drawee bankrupt, or fictitious person, or not having capacity to contract	78
when dead presentment may be made to personal repre- sentatives	78
when dead presentment for acceptance excused.....	78
same with presentment for payment	87
same with presentment for payment	91
funds in hands of, available to pay bill not assigned by bill not accepting us required by act is no liable on the invest- ment	127
 DRAWEE, accepting more than one part of bill drawn in a set, when he is liable on each part.....(3)	159
 DRAWER, bill may be drawn payable to, or order	19
when same person as drawee, holder may treat bill as pro- vided by § 889 A (b)	26
short hand date true date unless contrary be proved	29
when bill see payable not dated holder may insert true date, writing date inserted by hold ..(i) due course in mistake, holder may still operate as true date.....(b) signature on blank paper delivered to be filled up as bill, may be used as signature of drawer	30
may insert in bill name of referee to whom holder may resort "in case of need"	31
of a bill may insert stipulations, negativing or limiting his liability, etc	33
may waive same or all of holder's duties	34
signature by drawee of latter's assent to order (f), ac- ceptance of bill	34
a bill though incomplete, or not signed by, may be accepted by drawee	35
when his order assented to without qualification, acceptance is general	37
when his order varied in express terms, the acceptance is qualified	38
Contract of, in bill, incomplete and revocable until delivery bill no longer in his possession delivery presumes	38
who may be such	41
of cheque, paid by drawee with forged endorsement, must give notice of forgery within one year from discovery, else cheque held to be paid in due course	47
	49

BILLS OF EXCHANGE—INDEX.

19

DRAWER—*Continued.*

	SECTION.
who signs bill and adds words indicating his acting for principal or in representative capacity, is not personally liable, but different if words added mere words of identity.....	52
to whom bill negotiated back may re-issue and further negotiate, effect of.....	73
but cannot enforce payment against intervening party.....	73
of bill, when not discharged, when presentment for payment is delayed	76
of sight bill discharged, when holder does not present for acceptance, or negotiate within reasonable time..... (2)	77
having notice of qualified acceptance, must dissent within reasonable time or else bound therby..... (2)	83
is discharged from bill when holder, without his authority, takes qualified acceptance	84
discharged, if bill not presented for payment.....	85
when dead, notice of dishonour must be given to personal representative, if death known	97
regards him, when notice of dishonour by non-payment may be dispensed with	113, 114
of bill, what he engages, his position generally and his liabilities	12
not liable on bill unless signed it as such	131
what he may recover	134
of bill dishonoured may recover from acceptor	135
who pays bill does not thereby discharge it	140
when, pays bill payable to order of third party, may enforce payment against acceptor but may not re-issue bill, or acceptance for honour not stating for whose honour, deemed acceptance for honour of drawer	140
of overdue bill lost, must give holder a new bill of same terms	149
when cheque may be re-opened by, and how	156
when cheque may be uncrossed by, and how	169
of crossed cheque, when he pays it, when entitled to position as if payment had been to true owner	173
DRAWING. date of drawing bill shall be deemed true date.....	29
DURESS, when person obtains his bill by, his title is defective	56
DUTIES of holder of bill	65
DUE, when bill is said to be due	42, 46
DUE DATE, date of bill drawn in one country payable in another, how determined	164
" DUE COURSE," holder in, may insert date, and though wrong date bill not voided	30
DUE AND PAYABLE, rules for determining when bill not payable on demand, is due and payable.....	42, 46
EFFECT, until bill delivered so as to give effect thereto, contract of drawer, endorser, acceptor incomplete,.....	39
of failure to give notice of forged endorsement on cheque payable to order which has been paid by drawee	49
ENDORSEE of "patent right note" with words "patent right printed" takes same subject to equities between original parties	15

ENDORSEE. <i>Continued.</i>	SECTION.
payment by payee to, is valid when bill conditionally endorsed whether condition fulfilled or not.....	66
is not specified by blank endorsement, and by such endorsement bill becomes payable to bearer.....	67
provisions of act applicable to payee, apply to endorsee with necessary modifications, under special endorsement.....	67
may convert a blank endorsement into a special endorsement and how.....	67
under restrictive endorsement, his rights, powers, and privileges.....	67
under restrictive endorsement, when authorized to transfer, then all subsequent endorsees take bill with same rights and liabilities as first endorsee after restrictive endorsement.....	68
ENDORSEES. , two or more endorsing must all endorse if not partners unless authority in one to endorse for all... (2)	63
when endorsee wrongly designated or name misspelled how he may endorse.....	64
subsequent endorsees take bill with same rights, etc., of first endorsee after restrictive endorsement.....	68
ENDORSEMENT , meaning of expression.....	(1)
if only, or last endorsement, in blank makes bill payable to bearer.....	(3)
date of, shall be deemed true date.....	29
of holder with delivery of bill, then bill negotiated.....	(3)
what conditions it must comply with, in order to operate as a negotiation.....	62
must be written on bill and signed by endorser.....	62
written on allonge or copy when sufficient.....	(2)
must be endorsement on entire bill.....	(6)
partial endorsement not sufficient to operate as negotiation.....	(3)
what is a partial endorsement.....	62
simple signature of endorser without more is sufficient.....	63
of bill payable to two or more who are not partners all must endorse unless one endorsing has authority.....	(2)
when two or more on bill, the order in which they are deemed to have been made.....	63
when conditional the conditions may be disregarded and payment be valid.....	66
may be a blank or special.....	67
what is blank.....	67
what is special.....	67
may be a restrictive.....	68
what is restrictive.....	68
prima facie deemed to be before bill overdue, except where it bears date after maturity of bill.....	71
ENDORSER endorsing bill overdue makes bill payable on demand as against himself.....	(2)
signature on blank paper delivered by signer to be filled up as bill, may be used as signature of endorser.....	31
contract of, in bill incomplete and revocable until delivered, may insert in bill name of person to whom holder may resort in case of need.....	32
may insert express stipulation, negativing or limiting his own liability, etc., etc.....	33
may waive some or all of holder's duties.....	34
when bill no longer in his possession, delivery presumed....	34
who signs bills, and adds words indicating his acting for principal or in representative capacity, is not personally liable; but different if words added mere words of identity	41
	52

ENDORSER—Continued.

	SECTION.
prior endorser to whom bill is negotiated back, may reissue, effect of	73
but cannot enforce payment against intervening party.....	73
having notice of qualified acceptance, must dissent thereto, within a reasonable time, else bound (2)	83
is discharged from bill if holder without his authority take qualified acceptance	84
discharged if bill not presented for payment	89
notice of dishonour to be valid must at time given be on be- half of endorser	(b) 97
when dead, notice of dishonour must be given to personal representative	(c) 97
when notice of dishonour given by, or on behalf of endorser, it enures to benefit of others, and when..... (b)	102
as regards him, when notice of dishonour by non-payment may be dispensed with	108
not liable on bill unless he has signed it as such.....	131
person signing bill otherwise than as drawer or acceptor, he incurs liability of endorser to holder in due course....	131
on bill, what he engages, his position generally and his liabilities	133
what he may recover	(a) 134
may recover from acceptor or drawer or prior endorser....	135
who pays bill, does not thereby discharge it	140
who pays bill, his rights as against acceptor and prior parties may strike out his own endorsement, etc., and again negotiate bill	(b) 140
having right of recourse against party discharged by can- cellation of signature is also discharged.....	143
Subsequent to alteration of bill, is not discharged.....	145
who endorses part only of bill drawn in a set liable only on that part	159
on a demand note discharged, unless presented for payment within reasonable time	180
ENDORSERS when not discharged though bill not presented for payment without delay	76
discharged on sight bill when holder does not present for acceptance, or negotiate within reasonable time..... (2)	77
ENDORsing , omission to endorse by holder transferring bill for value, his title nevertheless rests in transferer	61
person endorsing in representative capacity may negative personal liability	(2) 61
ENGLAND , common law of	10
EVIDENCE , protest, <i>prima facie</i> evidence of the protest and of notice of dishonour.....	11
what evidence, <i>prima facie</i> evidence sufficient of protest for non-acceptance or non-payment of bill accepted or pay- able out of Canada	12
of fraud, etc., shifts onus of proving that holder is holder in due course	(2) 56
on whom is burden of proof	(2) 56
when cancellation of bill said to be unintentional, burden of proof rests on him so asserting.....	144
EXCHANGE , when sum payable by bill, according to indicated rate of exchange, or according to rate to be ascertained by bill, it is still a sum certain..... (d)	28

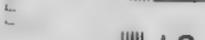
	SECTION.
EXHIBITING , the bill must be exhibited by holder when presented for payment, and delivered up when paid.....(3)	87
EXPRESSIONS , "acceptance," meaning of	(a) 2
"action," meaning of	(b) 2
"bank," meaning of	(c) 2
"bearer," meaning of	(d) 2
"bill," meaning of	(e) 2
"note," meaning of	(f) 2
"delivery," meaning of	(g) 2
"holder," meaning of	(h) 2
"endorsement," meaning of	(i) 2
"issue," meaning of	(j) 2
"value," meaning of	(k) 2
"defence," meaning of	2
"good faith," meaning of	3
"non-business days," meaning of	6
"given for patent right," meaning of	14
"determinable future time," meaning of	24
"month," meaning of	(2) 46
"negotiated back," meaning of.....	73
"transferee by delivery," meaning of	137
"payment in due course," meaning of	(2) 139
"pay cash," in crossed cheque, meaning of.....	(7) 169
EXPRESS STIPULATIONS , may be inserted by drawer or endorser negativing or limiting their liability, or waiving as regards themselves some or all of holder's duties.....	34
FACT , the reasonable time within which instrument is filled up as a bill is question of fact	32
what is an unreasonable length of time is question of fact (3)	70
FAILURE , effect of, in giving notice of forged endorsement on cheque payable to order when paid by drawee.....	49
FAITH , person who negotiates bill in breach of faith his title is defective	(2) 56
FEAR , when person obtains bill through fear his title is defective	(2) 56
evidence of fear shifts onus of proving that holder is holder in due course	(2) 58
FEES , what fees chargeable by notaries	(2) 124
FICTIONAL PERSON , when drawee in a bill is such, holder may treat bill as a promissory note	26
when drawee is such, then presentment for acceptance excused and bill dishonoured	(a) 78
when drawee such, then presentment for payment is excused	92
FIGURES , when sum payable in bill expressed in figures and words, the words govern	(2) 28
FINE not exceeding two hundred dollars can be imposed on person issuing patent right note without use of words indicating such	16
FIRM , signature of name of firm equivalent to signature by person signing of all persons in firm.....	132

	SECTION.
FIRST ENDORSEE , under restrictive endorsement, his rights vest in all subsequent endorsee.....	(4) 94
FORCE , when person obtains bill by force his title is defective.....	(2) 58
evidence of force shifts onus of proving that holder is holder in due course	(2) 58
FOREIGN BILL , definition of	25
when accepted as to part must be protested as to balance	84
appearing to be such on its face and dishonoured by non-acceptance, must be duly protested	112
when dishonoured by non-payment must be protested therefor	(2) 112
effect of not protesting bill	113
when not appearing to be such, protest in case of dishonour unnecessary	(2) 114
FOREIGN COUNTRY , notarial copy of protest and of notice of dishonour of foreign country, <i>prima facie</i> evidence of presentation for acceptance or payment of bill presented out of Canada	12
bill drawn in, negotiated, accepted or payable in Canada, how rights of parties are determined	100
the " <i>lex loci contractus</i> " generally governs	161
when an entered bill is endorsed in a foreign country, endorsement governed by law of Canada	161
FOREIGN NOTE , what is such	177
protest of, unnecessary except for purpose of preserving liability of endorser	187
FORGED signature, effect of	49
forged signature cannot be ratified	49
endorsement on cheque paid by drawer, effect of	(b) 49
endorsement on cheque payable to order paid by drawee, notice of, within one year from discovery must be given	(b) 49
failure to give notice of forgery	(2) 49
recovery of amounts paid on signature	(b) 49, 50
money recovered from one person gives him like rights to recover the same from any prior endorser subsequent to the forgery	(2) 50
FORMS of noting for non-acceptance	Form A
of protest for non-acceptance, or for non-payment of a bill payable generally	Form B
of protest for non-acceptance, or for non-payment of a bill payable at a stated place	Form C
a protest for non-payment of a bill noted, but not protested, for non-acceptance	Form D
of protest for non-payment of a note generally	Form E
of protest for non-payment of a note payable at a stated place	Form F
of notarial notice of a noting, or of a protest for non-acceptance, or of a protest for non-payment of a bill	Form G
of notarial notice of protest for non-payment of a note	Form H
of notarial service of notice of a protest for non-acceptance or non-payment of a bill or of non-payment of a note	Form I
of protest by a justice of the peace (where there is no notary) for non-acceptance of a bill, or non-payment of a bill or note	Form J
what forms may be used	125
may be changed, if original bill or note attached to protest	(2) 125



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	SECTION.
FRAUD , when person obtains bill by fraud, his title is defective	(2) 56
evidence of, shifts onus of proving that holder is holder in due course	(2) 58
FUNDS available in hands of drawee for payment of bill not assinged by bill itself	127
GENERAL ACCEPTANCE , what it is	38
GENERAL CROSSING of a cheque, what it is.....	168
GOOD FAITH , when a thing is deemed to be done in good faith, holder who in good faith inserts wrong date in a bill, the bill is then payable as if the wrong date had been the true date	30
holder of bill to be holder in due course must have taken bill in good faith	(b) 56
when bank paying crossed cheque in good faith entitled to protection	173
GRACE , three days of, allowed on bills, not payable on demand.	42
what is last day of grace	42
meaning of term	42
HONESTLY , if thing done honestly deemed to be done in good faith, although done negligently	3
" HOLDER ," meaning of expression	(g) 2
in due course without notice of patent right note, same is valid in his hands	14
when he may treat bill as an inland bill	25
may insert true date of acceptance or issue in a bill payable at fixed period after date or at sight, and date of issue or acceptance not inserted	30
in due course, who in good faith inserts wrong date, bill shall be payable as if date so inserted true date	30
" in due course," with whom an instrument negotiated after completion holds it valid and effectual in his hands against all parties and for all purposes	32
may resort, in case of need, to person whose name inserted by drawer or endorser for such purpose	33
may have liability of the holder or endorser limited by express stipulation	34
his duties, some or all, may be waived by drawer or endorser	(b) 34
entitled to have sight draft, subsequently accepted, accepted as of date of first presentment	(2) 37
delivery to him, so as to make all parties liable to him, presumed	(2) 40
of bill drawn by infant, minor or corporation not having power, his position as against other parties to instrument	48
when deemed holder for value	54
having a lien on the bill is deemed holder for value pro tanto	(2) 54
for value can recover from accommodation party on bill, whether he knew him to be such or not	(2) 55
in due course, who is such	56
when a holder without value has all the rights of a holder in due course	57
prima facie every holder is holder in due course	(2) 58

"HOLDER"—Continued.**SECTION.**

when bill given for usurious consideration is void in hands and when not	59
... bill transferred, so as to constitute transferee holder when bill negotiated	60
who endorses and delivers bill negotiated it	(3)
of a bill, who transfers without endorsing for value gives transferee his title	61
may convert a blank endorsement into a special endorsement and how	(5)
in due course, not prejudiced, though he may have notice of dishonour of bill not overdue, at time of dishonour	67
in due course, acquires good and complete title to bill nego- tiated by transferer, though latter's title defective	72
of bill, rights and powers of	74
duties of	75
when holder is excused delay in presenting bill for accept- ance	76
of bill payable at sight, must present for acceptance or nego- tiate it within reasonable time	77
effect of not doing so	(2)
because holder believes bill would be dishonoured, present ment for acceptance not therefore excused	(2)
may refuse to take qualified acceptance and treat bill as dishonoured by non-acceptance	79
who takes qualified acceptance may bind drawer or endorser thereto if, after notice, latter does not dissent within reasonable time	83
presenting bill for payment shall exhibit it	(3)
if authorized he may take such acceptance, when it binds drawer or endorser as also when they subsequently ac- cept to such	84
must himself present for payment or some person for him, excused from presenting for payment, when delay caused by circumstances beyond his control, etc., etc	87
not excused from presenting for payment, because he has reason to believe that bill will be dishonoured	91
shall deliver it up when paid	(3)
has immediate right of recourse when bill dishonoured by non-payment	95
in due course, rights of such, subsequent to omission to send notice of dishonour not prejudiced by omission	(a)
notice of dishonour to be valid, must be given on behalf of holder	(b)
when notice given by, or on behalf of, enures to benefit of others, and who	(a)
of inland bill dishonoured may note and protest it for non- acceptance, whichever he thinks fit	102
may protest for better security	113
in due course, person signing otherwise than as acceptor or drawer becomes liable to us endorser	116
what he may recover	(a)
of bill dishonoured may recover from any party to it	131
of bill payable to bearer who negotiates bill by delivery without endorsing is called "transferee of delivery"	134
when acceptor becomes holder in his own right of bill after or at maturity, bill is discharged	135
who renounces his rights after maturity, against acceptor, bill is discharged	137
may renounce liabilities of any party, when	(2)
may cancel bill, and bill discharged	142
may cancel signature of party liable and thus discharge each party	143
without his authority	144

"HOLDER"— <i>Continued,</i>	SECTION.
of bill losing, it may demand another bill from drawer.....	156
of bill in a set, endorsing two or more parts is liable on each.....	159
his duties determined by law where bill is presented for payment or acceptance, etc.....	162
of cheque. See <i>Cheque</i>	165
when a creditor of bank in lieu of drawer of cheque.....(b)	166
when he may cross cheque	(2) 169, (3) 169
when he may add words not negotiable	(4) 169
 HOLDER IN DUE COURSE, not affected by renunciation unless received notice thereof	142
may avail himself of altered bill as if no alteration, when..	145
 HONOUR, acceptance and payment for	147
 ILLEGAL CONSIDERATION, person obtaining bill by such, his title is defective	(2) 58
 IMMEDIATE PARTIES, what is delivery of bill, as between such	39
 IMPERIAL ACTS not in force	9
 IMPLICATION of law, holder having lien on bill by, is holder for value pro tanto	(2) 54
 IMPRISONMENT, person issuing "patent right note" liable to, who does not write words "Given for patent right" across face of the note	16
 "IN CASE OF NEED," by such is meant in case bill is dishonoured for non-acceptance or non-payment.....	33
referee "in case of need," who he is.....	33
 INCHOATE, a note is incomplete until delivered.....	178
 INCOMPLETE, a note is incomplete until delivered.....	178
bill incomplete may yet be accepted	37
see <i>Endorser</i> .	
 INDEMNITY, loss of bill, may not be set up, if indemnity given as ordered by Court	157
 INFANT, bill drawn by, effect of, in hands of, holder as against other parties	48
 INLAND BILL, definition of	25
when holder may treat bill as an inland bill	25
may be noted and protested when dishonoured for non-acceptance or non-payment as holder thinks fit	113
except in province of Quebec not necessary to note and protest such to preserve recourse against drawer or endorser	113
drawn upon any one in Quebec, or payable or accepted therein, all parties on except acceptor are discharged in default of protest, etc., and of notice thereof, etc.....113, 114	114
endorsed in a foreign country, the law of Canada governs as to endorsement	161
 INLAND NOTE, what is such	177
 INSTALMENT, when sum required to be paid in instalment, sum still a sum certain	(b) 28

	SECTION.
INSTRUMENT , payable on a contingency, not a bill, and happening of event does not cure defect	18
signature to blank paper, delivered to be filled up as a bill, when enforceable against party thereto prior to its completion	32
after completion, if negotiated to "holder in due course" valid for all purposes in his hands	32
INTENTION indicated that bill be not transferred makes it non-negotiable	21
if no such intention, and payable to particular person, bill is payable to order	22
INTEREST , when sum required to be paid in, sum still a sum certain	28
from when it runs in dated and undated bills	(2) 28
INTERPRETATION OF LAW , when bill drawn in one country payable, accepted or endorsed in another	164
INTERVENING party, cannot be made pay bill when negotiated back to drawer, prior endorser or acceptor	73
INTERVENTION of payer for honour, who it is, and when it can be and for whom	153
effect of, on all parties	155
INVALID , bill not invalid because antedated, or post dated, or dated on Sunday or non-juridical day	(d) 27
IRREGULAR , when presentment is irregular and acceptance refused on some other ground, presentment excused	78
" ISSUE ," meaning of	(i) 2
date of, in a bill, may be filled in by holder, when	30
JOINT NOTES , there may be joint makers of notes, so as to be jointly liable and not severally	179
JUSTICE OF PEACE , when he may act as notary public..... his powers and privileges	123 123
LAW , common	10
LAWS , conflict of	160 to 164
LEGAL HOLIDAY , when last day of grace falls on such, then next following juridical day last day of grace	42
what are legal holidays	43
LENDING , person lending his name, without receiving value, the bill is an accommodation bill	55
LIABILITIES of any party may be renounced by holder	142
LIABILITY of drawer or endorser may be negotiated or limited	34
is sufficient to constitute a valuable consideration for a bill	(2) 53
of parties	127
of "transferrer by delivery"	137
LIEN , holder becoming such on a bill, is holder for value to extent of lien	(2) 54

SECTION.

LIQUIDATION damages, measure of damages recoverable when bill dishonoured shall be liquidated damages, and what they are	134
LOST BILL , before overdue holder may demand another bill from drawer in action on, court may order loss not to be set up upon getting indemnity	156 157
MAKER , a note made by, payable to his own order, not a note until endorsed of bill, etc., who may be such of note payable at a particular place, not discharged, because note not presented there	176 176 183
MAKERS , there may be two or more on a note liability of, when two or more makers	179 179
MATERIAL ALTERATION in bill, effect of, and result from, which is not apparent, holder in due course may avail himself as if no alteration what are material alterations in particular.....	145 145 146
MATURITY , when bill matures except when endorsement dated after maturity of bill such endorsement <i>prima facie</i> effected before bill overdue, of sight, or after sight, bill can only be fixed by presentation for acceptance if bill stating place of payment is not presented on day of maturity, acceptor not thereby discharged,(2) before bill matures holder may protest for better security if acceptor becomes bankrupt or suspends if holder becomes holder of bill in his own right at or after maturity, bill is discharged if at or after maturity holder renounces his rights against acceptor, bill discharged at or after maturity holder may renounce his right against any party to bill(2) renunciation must be in writing or bill delivered up,(3) of bill calculated on sight, bill accepted for honour from date of protest, not from date of accepting for honour,	146 71 75 93 116 141 142 142 142 150
MEANING of words "I promise to pay" when signed by two or more makers	179
MINOR bill drawn by, in hands of holder, effect of, as against other parties when drawee a minor, presentation for acceptance is excused	48 79 (a)
MISCARRIAGE , indictable offence, person issuing "give for patent right," guilty of, who does not write words "given for patent right" across face, by post office, not to invalidate notice of protest properly sent	16 104
MISDESCRIPTION , in notice of dishonour of bill, will not vitiate notice unless party misled	(2) 98
MIS-SPELT , when name of payee or endorsee misspelt, how he may endorse	64

	SECTION.
MISTAKE , when wrong date inserted in bill by holder in mistake such date shall operate as true date.....	30
cancellation by, is inoperative.....	144
MONTH , bills payable in month or months fall due on same num- bered day as dated	46
means a calendar month	(2) 46
NAME , holder of bill may sue on, in his own name..... person signing in trade, or assumed name, liable as if signing his own name	74 (2) 132
NEED , see <i>Reference in Case of Need</i> .	
NEGLIGENCE , though a thing done in negligence, yet if done honestly, it is deemed to be done in "good faith".....	3
NEGOTIABLE , when bill was negotiable	21
negotiable bill, may be payable to either "order" or "bearer."	(2) 21
bill negotiable in its origin continues to be, and when ceases to be	69
NEGOTIATE , holder of bill payable at sight must negotiate within reasonable time or present for acceptance..... bill may be again negotiated by endorser who pays it, etc...	77 140
NEGOTIATED , when instrument after completion, negotiated to holder in due course valid for all purposes in his hands	32
when a bill is said to be negotiated back, bill may be negotiated back to drawer, prior endorser or acceptor, effect of	60
bill at sight negotiated must be presented for acceptance or negotiated, by holder, within reasonable time	73
bill drawn in one country negotiated in another, how rights, duties, etc., of parties determined.....	77
when demand note negotiated, holder not affected by defect in title because not presented within reasonable time after issue	160 182
NEGOTIATING , person negotiating bill in breach of faith, his title is defective	(2) 56
on bills	60
NEGOTIATION , what conditions endorsement must comply with, to operate as negotiation..... prima facie deemed to have been effected before bill overdue unless endorsement dated after maturity	62 71
NON-ACCEPTANCE , bill dishonoured for, the holder may re- sort to referee in case of need..... <i>See Acceptance, Presentment, Protest.</i>	33
when bill is dishonoured for non-acceptance.....	81
when dishonoured for non-acceptance immediate right of re- course against drawer and endorsers accrues to holder.....	82
holder may treat bill as dishonoured by non-acceptance when only qualified acceptance offered.....	83
bill protested for, may subsequently be protested for non- payment	113
" NON-BUSINESS DAYS" , what are	(e) 2

	SECTION.
NON JURIDICAL day, bill dated upon, not for that reason invalid	27
when last day of grace falls on such, then next following juridical day last day of grace	42
what are non-juridical days	43
NON PAYMENT , bill dishonoured for, its holder may resort to person named as referee in case of need	33
bill dishonoured for, may yet be accepted	35
when bill is dishonoured by	95
See <i>Non-Acceptance</i> .	
when dishonoured by, immediate right of recourse accrues to holder	95
notice of dishonour by, to whom to be sent	96
effect of failing to give notice of dishonour	96
subsequent notice of non-payment not necessary, when bill dishonoured by non-acceptance, unless bill in meantime accepted	96
bill may be protested for, though previously protested for non-acceptance	115
NOTARIAL fees, what fees are chargeable	(2)
act of honour, how founded and what it is	(2)
124	154
NOTARY clerk, teller or agent of bank cannot act as such in protesting bill payable at bank in which he is employed ..	13
NOTARY PUBLIC , justice of peace may sometimes act as such	123
fees chargeable by	(2)
124	
NOTE , see <i>Patent Right, Bill of Exchange</i> .	
NOTED AND PROTESTED , an inland bill dishonoured may be noted and protested for non-payment or non-acceptance as holder thinks fit	113
NOTICE , effect of want of such notice	49
of forged indorsement on cheque payable to order paid by drawee must be given within one year from discovery ..	49
when agent signs signature by procuration, is given to effect that agent's authority is limited	51
that party to bill, an accommodation party immaterial as against holder for value	55
that bill previously dishonoured prevents holder from being "holder in due course."	(a)
of defect of title in person negotiating bill, prevents person from being "holder in due course."	(b)
actual notice necessary of usurious consideration to make bill void in hands of holder	59
of dishonour at time bill, not overdue, taken by party, he takes it subject to defect in title at time of dishonour ..	72
of such dishonour does not affect the rights of a "holder in due course"	72
when notice given of partial acceptance not treated as qual- ified acceptance	84
to bank of death of customer terminates bank's duty and authority to pay cheque	167
when holder of demand note has no notice of defect in title, not affected thereby in case of demand note not pre- sented within reasonable time after issue	(2)
180	
NOTICE OF DISHONOUR by non-acceptance or non-payment, to whom must be given	96
effect of not giving such notice	96

NOTICE OF DISHONOUR— <i>Continued.</i>	SECTION.
not necessary to give such to acceptor, to make him liable, (2).....	96
rights of "holder in due course," subsequent to omission to give notice not prejudiced by omission	(a) 96
when notice of dishonour by non-acceptance given not neces- sary to give notice of dishonour for non-payment	(b) 96
rules governing the giving of notice of dishonour	97
how soon notice must be given	(a) 97
may be given to party himself or his agent	(b) 97
must be given by or for holder or endorser himself liable on bill	(b) 97
when it must be given to personal representative	(c) 97
must be given to all of two or more drawers or endorsers not partners	(d) 97
may be given by an agent in his own name or name of any one entitled to give the notice	(e) 98
may be in writing, or personal communication	(d) 98
its terms	(d) 98
must identify the bill and intimate that bill dishonoured, if misdescription of bill does not vitiate notice unless party misled	98
simple return of dishonoured bill sufficient notice in form ..	99
written notice need not be signed	(b) 99
insufficient written notice may be supplemented by verbal communication	99
when bill in hands of agent, he may give notice to parties or to principal	100
if to principal, must be done in same time, as if he were holder, and the principal then has same time to give notice as if agent had been independent holder	(2) 100
party receiving such has same time to give such as ante- cedent holder	101
to whose benefit it ensues, when given in behalf of holder, do., when given on behalf of endorser	(b) 102
how notice should be addressed and when sent	103
notice not invalid, because party dead to whom it is ad- dressed	(3) 103
when sent according to act, due notice of dishonour is deemed to have been given, notwithstanding any miscar- riage by post office	104
delay in giving, when excused	105
when cause of delay ceases to operate, notice must be given with reasonable diligence	(2) 105
when notice dispensed with	106, 107
laws as to, determined by laws of country wherein bill dis- honoured	102
NOTING, delay in, when excused	111
when causes of delay ceases to operate bill must be noted or protested with reasonable diligence	(2) 111
<i>See Protest.</i>	
NOTING OR PROTEST, time begins to run from date of, if noted or protested for non-acceptance or non-delivery	45
NOTING AND PROTESTING, what is sufficient evidence of,	
in an action	11
what fees are chargeable	124
NOT NEGOTIABLE, when these words may be added to cheque and by whom	(5) 169
person taking crossed cheque marked "not negotiable" gets only title of person from whom he got it	174
*OMISSION," see Wanting in Any Material Particular.	

	SECTION.
ORDER , when a bill is payable to	22
when payable to order of specified person and not to him or his order, nevertheless payable to him or his order at his option	(2) 22
when a bill is said to be payable to	(3) 39
in which endorsements shall be deemed to be made, when two or more	65
ORIGIN , bill negotiable in its origin, continues to be so, for how long	69
OVERDUE , bill overdue, may yet be negotiated	37
holder of bill to be "holder in due course" must become holder before bill overdue	53
bill may be negotiated, but subject to equities affecting it at its maturity	70
person taking it can only acquire and give such title as person had from whom he got it	70
when a bill payable on demand is deemed to be overdue, (2) every endorsement prima facie before bill overdue, except when dated after maturity	70
when bill not overdue is dishonoured, person taking it with notice takes it subject to title, etc., attaching at time of dishonour	71
bill when lost, holder may demand a new bill from drawer demand note, not to be deemed overdue, so as to affect holder because not presented within a reasonable time after issue	156
182	182
OWNERSHIP , when same in a bill is not transferred, then endorsement is restrictive	68
PAID IN DUE COURSE , use of words	49
PARTIAL ACCEPTANCE is when the acceptance is to pay part of amount of bill	38
when notice of, given, not treated as partial acceptance	84
PARTICULAR PERSON , when bill payable to, etc., then payable to order	22
PARTICULAR PLACE , see <i>Payable at Particular Place</i>	
PARTIES , as between immediate and remote parties, what is delivery of bill	40
capacity and authority of	47
who may be parties to	47
as against prior parties holder is holder for value if at any time value is given	54
defect of title in prior parties to bill does not affect holder of bill in due course	74
liability of	127
PARTNERS , bill may be addressed to two or more drawees as partners	18
two or more persons who are not partners endorsing must all sign, unless person signing has authority from all, (2)	63
PARTY whose signature to bill, prima facie party for value.... See <i>Intervening Party</i> .	58
giving notice, is excused from giving notice if delay not attributable to his default, misconduct, or negligence....	105
any party to bill may be discharged by holder of bill, or his agent, intentionally cancelling his signature,	143
assenting to alteration in bill, not discharged by such alteration	145

BILLS OF EXCHANGE - INDEX.

93

	SECTION
PATENT RIGHT , when consideration for bill or note purchase money of, words "given for patent right" must be across face of instrument	14
without such words instrument void, except as against "holder in due course" without notice (2)	14
endorsee or transferee of patent right note takes same sub- ject to equities existing between original parties	15
everyone issuing, selling or transferring patent right note knowing the same to be such, without writing words "given for patent right" across face, guilty of indictable offence	16
PAYABLE , bill drawn in one country, accepted, negotiated, or payable in another, how rights of parties determined	160
PAYABLE AT PARTICULAR PLACE , when note made so payable must be presented at such place	183
PAYABLE ELSEWHERE , when bill payable elsewhere than at residence or place of business of drawer, it must be presented for acceptance before being presented for pay- ment	(2) 75
PAY CASH , meaning of in crossed cheque	(7) 169
PAYEE , bill may be made payable to two or more payees, or in the alternative to one of two, or one or some of several payees, or to holder of office	19
must be named or indicated with reasonable certainty when bill <i>not</i> payable to bearer	(4) 21
when, is non-existing, or fictitious person, bill may be treated as payable to bearer	(5) 21
provisions of act relating to apply to endorsee under special endorsement	(4) 67
note must be delivered to be complete	178
PAYEES , two or more not partners endorsing must all endorse unless authority in one to endorse for all	(a) 63
when payee wrongly designated, or name mis-spelt, how he may endorse	64
PAYER , may disregard condition of endorsement and payment to endorsee be valid	66
for honour, may intervene and may pay bill supra protest ..	153
when two or more persons intervene and want to pay supra protest when payment accepted	(2) 153
PAYER FOR HONOUR , his declaration, the foundation of no- tarial act of honour	(2) 154
what he is entitled to, upon payment supra protest	155
PAYMENT , when no time for payment expressed bill payable on demand	(b) 23
by acceptor, when made dependent on fulfilment of condi- tion, acceptance then qualified	(3) 38
at a particular specified place, not a conditional or qualified acceptance	(3) 38
day of payment included in computing time when bill is due, of bill drawn by infant, etc., may be enforced by holder as against other parties	44
may be made by payer, and be valid, whether conditions fulfilled or not, when endorsement conditional	48
may be received by endorsee under restricted endorsement (3)	66
	68

PAYMENT— <i>Continued</i>	SECTION
discharge and ends negotiability of note negotiable in its own right	69
cannot be enforced against intervening party to bill by drawer, prior endorser or acceptor, to whom bill nego- tiated back	73
of bill may be enforced against all parties liable on bill by holder in due course	74
(b) or be in due course, refuses person so paying and dis- charges him from all liability	74
protestment for must be made	75
when he demanded on bill the bill must be exhibited to payee and delivered up on payment	75
when bill is dishonoured by non-payment	95
notice of non-payment when, and to whom, it should be sent, times available for the payment of bill in hands of drawer not assugnd by bill itself	96
whereby bill discharged	127
by or on whose behalf payment must be made	139
in "due course," meaning of	139
when bill paid by drawer or endorser it is not discharged by accommodation party, discharge the bill	139
(b) of bill by endorser, latter's position	149
time of payment, alteration of, is a material alteration	146
acceptance and payment for honour	147
when one part of a bill drawn in a set, is discharged by payment generally whole bill is discharged	159
bank receiving payment for crossed cheque for customer who has no title, not responsible to true owner from simply having received money	175
PAYMENT FOR HONOUR SUPRA PROTEST , effect of holder refusing to receive such	153
to operate as such, must be attested by notarial act of honour	154
what is notarial act of honour	154
who are discharged by	155
PERSON IN POSSESSION , effect of holder refusing to receive <i>See Person Face</i>	31
refused to bill getting notice of acceptance by drawee is in same position as if bill delivered	39
order obligator to endorse bill in representative capacity may endorse so as to negative personal liability	61
from whom payment of bill demanded, must be shown it	85
must be delivered up on payment	131
singing bill not as acceptor or drawer becomes liable as obligator	131
PERSONAL , bill face, when agent liable, and not liable in delay, those may negative such, who endorses in repre- sentative capacity	52
drawee still liable to prior parties against holder of bill representative	61
endorsement	71
representative protestment for acceptance must be to him, whom drawee stands	75
representative protestment for payment also	85
representative notice of dishonour must be given to him, if death of drawer or endorser known	97
consequently notice of dishonour may be by such	98
PLACE , want of statement of, where drawn, or payable, does not render bill invalid	27
<i>See next above.</i>	

PLACE. *Continued.*

	SECTION
"of business," when bill payable elsewhere than at, must be presented for acceptance before presented for payment.....	75
when should be to drawee or acceptor personally.....	87
of payment, when specified, bill must be there presented.....	88
when no place of payment specified, presentation may be at place of address of drawee or acceptor.....	88
when no place of payment and no address, presentation at place of business, but if not known, at residence.....	89
"of business," when presentation for payment should be made at.....	89
when no place of business mentioned.....	90
of payment, when said to be city, town or village, without more, then where presentation for payment is to be made.....	90
of payment, when not mentioned in bill, presentation for payment not necessary to render acceptor liable.....	93
of payment, when such mentioned in bill, omission to present thereto on day of maturity does not discharge acceptor. (2)	93
of dishonour, bill must be protested at, or within five miles of place of presentation, and dishonour in Canada.....	121
of payment, alteration of, in a bill is material alteration.....	146
of payment, addition of, when bill accepted generally is material alteration.....	146
PLEDGE. fact of note being pledged as collateral security does not invalidate instrument as a note.....	176
POST-DATED , bill so dated, not for that reason invalid.....	27
POST OFFICE , when presentation through, is sufficient. (d) 78,	
mischarge by, not to invalidate notice of dishonour.....	90
PRESENTATION , bill payable on, is payable on demand. (a) for payment on so doing, holder must exhibit bill.....	23
for payment, if place of payment mentioned in bill, and bill not presented on day of maturity, acceptor not discharged.....	25
if bill sued before presented, costs in discretion of Court.....	93
must deliver it up when paid.....	93
PRESENTATION AND DISHONOUR , protest prima facie evidence in any court of such, and of notice.....	11
PRESENTMENT for payment in foreign country of bill drawn in Canada prima facie proved by production of notarial copy of protest and notice of dishonour, etc.....	12
for acceptance in foreign country drawn in Canada, prima facie proved by production of notarial copy of protest and of notice of dishonour, etc.....	12
holder of sight draft, entitled to have drawee accepting subsequently, accepting as of date of first presentment. (2)	37
for acceptance, necessary in bill payable at or after sight to fix time of maturity.....	75
when it must be made before presentation for payment. (2)	75
for payment, cannot be had on bill drawn payable elsewhere than at residence or place of business of drawee, until after presentation for acceptance.....	75
nor can it be had when bill specially stipulates for presentment for acceptance.....	75
for acceptance, when only such is necessary.....	75
when delay in such is excused.....	76
for payment, when delayed owing to presentation for acceptance, in what cases does not discharge drawer or endorser.....	76
for acceptance when a bill is duly presented.....	78

PRESENTMENT— <i>Continued.</i>	SECTION.
rules governing such	78
must be by or on behalf of holder, to drawee or person authorized to accept, at reasonable hour on business day, before bill overdue	(a) 78
when must be to all of two or more drawees not partners. (b)	78
when drawee dead, presentment made to his personal representative	(c) 78
when presentment through post office sufficient	(d) 78
for acceptance when such is excused, and bill may be treated as dishonoured	79
not excused, because holder has reason to believe that bill would be dishonoured	(2) 79
for payment, not necessary when bill dishonoured by non-acceptance	82
for payment, must be made	85
effect of not so presenting for payment	85
rules governing such presentment	86
must be made on day bill falls due	(a) 86
of a demand bill must be made within reasonable time, after issue to bind drawer, after endorsement to bind endorser	(b) 86
by whom presentment for payment must be made	87
where it must be made	87
to whom it must be made	87
for payment, when said to be presented at the proper place for payment, must be to all of two or more drawees not partners when no place of payment mentioned	(2) 87
when drawee or acceptor dead, and no place of payment specified, must be to personal representative	(3) 87
for payment, when presentment becomes excused	89
for payment, when allowed through post office	(2) 90
when place for, said to be town or city or village without more, then how to proceed as to presentation	90
for payment, delay in making, when excused	91
when delay ceases to operate, then presentment must be made within reasonable time	91
when it can be dispensed with	(2) 91
for payment, when it can be dispensed with	(2) 91
fact of holder having reason to believe that bill will be dishonoured does not dispense with necessity for presentment	92
is excused, when drawee a fictitious person	(b) 92
is excused, when, as regards drawer, drawee or acceptor not bound	(c) 92
is excused, when, as regards endorser, bill for his accommodation, etc.	(d) 92
for payment, excused by waiver, express or implied	(e) 92
for payment, not necessary, when no place of payment mentioned in bill to make acceptor liable	93
for payment, to acceptor for honour must be day after maturity when acceptor's address and place where protested for non-payment are the same	94
when not the same, then bill must be forwarded for presentation not later than day after maturity	94
what delay excuses non-presentment to acceptor for honour	(3) 94
when presented and payment refused or cannot be obtained, or excused, and bill overdue and not paid, then bill dishonoured, by non-payment	95
to acceptor for honour, and by him dishonoured, bill must be protested for non-payment by him	(2) 117
for payment, law as to, determined by law of country where-in presentment made	162

PRESENTMENT. <i>Continued.</i>	SECTION.
for acceptance, law as to, decided by law of country where in presentment made	161
for payment of cheque must be in a reasonable time, effect of not so presenting cheque within reasonable time	166
for payment when a note payable on demand should be pres- ented for payment	181
for payment, note payable at particular place, effect of not there presenting it on day of maturity	183
for acceptance, provisions as to, relating to bills of exchange not to apply to promissory notes	186
PRESUMED , valid delivery of bill in hands of "holder" in due course, conclusively presumed	40
PRIMA FACIE , blank paper with signature delivered by signer to be filled up as bill prima facie authority to fill up, for any amount	31
person in possession has prima facie authority to sign, or any omission	31
PRIOR ENDORSER , see <i>Endorser</i>	73
PRINCIPAL , whose signature signed by procuration, only bound when agent acts within limits of actual authority	51
person signing as such not personally liable but liable when added words were mere words of description, rule for construction of instrument when determining whether signature that of principal or agent	52
PROMISSORY NOTE , when a bill of exchange may be treated as such	26
<i>See Bill of Exchange.</i>	
what is a promissory note	173
an instrument payable to maker's order, not in form and endorsed	176
not invalid because it contains pledge of collateral security with authority to sell or dispose thereof	176
what is an inland note	177
what is a foreign note	177
until delivery, promissory note is inchoate and incomplete, may be made by two or more as makers, who may be liable jointly or severally	178
meaning "I promise to pay" is both joint and several	179
how soon note payable on demand must be presented	179
how what is a reasonable time is determined	180
effect of not presenting note payable on demand within rea- sonable time	181
when with assent of endorsee a demand note is held as col- lateral security, it need not be presented so long as held as such	181
a demand note not deemed overdue, so as to affect holder with defect of title because reasonable time has elapsed within which to present for payment	182
made payable at particular place, must be presented there, not necessary to bind maker to present note on day of ma- turity	183
(2) 183, (2) presentment for payment not necessary, where no place of payment mentioned in body of note	184
presentment is necessary, in order to make endorser liable	184
presentment at a particular place sufficient to make endorser liable, but when such place is simply indicated by way of memorandum only, presentment to maker will suffice	184
what maker of promissory note engages, his position, etc ..	185

PROMISSORY NOTE. <i>Continued.</i>	SECTION.
maker of a note corresponds with acceptor of a bill, etc., (2) 186	186
first endorser of note corresponds with drawer of bill, etc., etc., (2) 186	186
provisions of statute relating to "presentment for acceptance," "acceptance," "acceptance supra protest," "bills in set," do not apply to, (3) 186	186
unnecessary to protest foreign note, except to preserve liability of endorser (3) 187	187
PROPERTY in bill may not be transferred, though bill delivered (3) 49	49
PROPER SIGNATURE , payee or endorsee, whose name mis-spelt, may endorse with proper signature, (3) 64	64
PROPER PLACE , when presentment said to be made at proper place (3) 87	87
PROTEST , <i>prima facie</i> evidence (1) 11, 12	11, 12
<i>prima facie</i> evidence, in any action, of presentation and dishonour, and of service of notice, etc., (1) 11, 12	11, 12
not necessary to protest, to make acceptor liable, (1) 109	109
delay in noting excused (1) 111	111
when cause of delay ceases, must, (2) 111	111
of a foreign bill, necessary for non-acceptance or non-payment (2) 132	132
when foreign bill accepted as to part must be protested as to balance (3) 112	112
result of not protesting foreign bill (3) 112	112
of an inland bill (3) 109, 113	109, 113
in default of, in Quebec, all parties, except acceptor, discharged (3) 113	113
where it may be dispensed with, (3) 119, 122	119, 122
of a bill, not on its face appearing a foreign bill, unless it is so described, or unless it is otherwise known to be, (3) 112, (2) 114	112, 114
a bill protested, for non-acceptance, may be protested for non-payment (3) 115	115
holder may protest bill for better security, (3) 116	116
before presented to acceptor for honour, and refused, he is liable for sight of non-payment by him, (3) 117	117
to the equity defendant, (3) 118	118
where it must be made or noted, (3) 119	119
when defrauded, the protest may be subsequently extended, (3) 119	119
as of date of noting, acceptor, etc., (3) 120	120
may be made on copy, or written particular, of bill, which may be destroyed or defaced, (3) 121	121
when a bill must be protested, (3) 121	121
when a protest, through post office, must be protested before the third, or next juridical day, (3) 121	121
time of payment, or non-payment, may be rended on day of protest, or, at any time after 3 o'clock in afternoon, (3) 121	121
when a protest, through post office, must be protested within 10 days, or less, especially, (3) 122	122
otherwise, if a locality is not accessible, (3) 122	122
must be served by notice, (3) 122	122
fees of, or, where chargeable, costs of, (3) 123	123
forades to be used, (3) 125	125
copy of bill and endorsement may be included in the forms, (2) 125	125
when bill has been protested, who may intervene for holder, and when, (3) 147	147
date of, on sight bill accepted for honour is from whence maturity is calculated, not from date of acceptance, (3) 150	150
law is to be decided by law of country wherein bill is protested, (3) 162	162
of foreign bill unnecessary, except for purpose of preserving liabilities of endorser (3) 187	187

	SECTION.
PROTESTING "for better security,".....	116
PROVINCES , what days are legal holidays and non-juridical days in the several provinces	43
PROVISIONS of the Act, relating to payee, apply mutatis mutandis to endorsee under special endorsement	44
QUALIFIED ACCEPTANCE , what it is may be refused, and holder treat bill as dishonoured by non- acceptance	39
when taken, unauthorized and not assented to, the drawer or endorser is discharged from bill	83
assent to is presumed if, after notice drawn to endorser, does not dissent within reasonable time	84
QUEBEC , legal holidays in	43
inland bill drawn on person in province of or payable or accepted therein, parties thereto, except acceptor, charged in default of protest for non-acceptance or non- payment	113
RATIFICATION , unauthorized signature may be ratified, but not forged signature	49
REASONABLE , diligence, after exercise of, and protest cannot be effected, it is excused	79
the diligence must be exercised in presenting for payment	87
diligence must be exercised in giving notice of dishonour for non-payment	105
diligence must be exercised in noting or protesting	111
" REASONABLE TIME ," see <i>Time</i> within which instrument filled up as a bill, a question of fact	32
if holder, takes a qualified acceptance, drawer or endorser deemed to have assented, unless dissent expressed within reasonable time after notice	83
rules for determining what is, whether a bill drawn to be presented to bank	120
how determined	120
120	180
REFEREE , "in case of need" what is meant by	34
"in case of need" see <i>Reference in Case of Need</i>	117
REFERENCE IN CASE OF NEED , bill containing	117
before being presented to referee in case of need, may be tested for non-payment	117
REFUSAL , to accept, bill dishonoured for	16
copied	16
16	57
REISSUE of bill, may be laid when negotiable title passes to prior endorser or acceptor	73
bill cannot be reissued by drawer, who possess bill payable to order of third party	140
RENUNCIATION , holder may, at or after maturity, renounce rights against acceptor, when endorser disclaims	112
holder may also renounce the liabilities of the payee to bill, when	120
must be in writing or bill be delivered open	112
not to affect rights of holder in due course without notice	112
REOPENED , when a cheque may be, by drawer, and how	17
REPRESENTATIVE , capacity, person signing as such, not per- sonally liable but different, when words added to the word of description	52
rule for determining capacity of	52
person endorsing in such, may negative personal liability	61

	SECTION.
RESIDENCE , when bill payable elsewhere than at residence of drawer, may be presented for acceptance before being presented for payment, and when bill is payable at residence (12) when bill is not otherwise specifically mentioned as to place of payment 69 90	69
RESTRICTIVE , indorsement may be restrictive, i.e., when so made, endorsement 65 when so made, endorsement 68 when so made, examples of 68 when so made, examples of 68 when so made, rights and powers of endorsee under 68	65 68 68 68
RESTRICTIVE ENDORSEMENT , when endorsee, rather than the holder to whom all subsequent endorsements take place, is bound subject to same liability as first endorsee or restrictive endorsement 68 until he has endorsed, which in its origin was negotiable, continues to be negotiable 69	68 69
REVOCABLE , contract of drawer, acceptor, or endorser, re- vocable until delivery of bill 29	29
RIGHTS AND LIABILITIES of endorsee under restrictive endorsement 68 68	68
RIGHTS enjoyed by "holder in due course", when holder without value enjoys rights of holder in due course 57 when holder with value enjoys rights of holder in due course 57 of endorsee, under restricted endorsement, what they are 68	57 57 68
RULES governing presentment for acceptance 78	78
SEAL , corporaton may sign by seal, though seal not made ab- solutely necessary 5	5
SECURITY , holder must give security before he demands from drawer new bill for lost bill 156	156
SIGHT , bill in a set 158 <i>See Bill of Exchange.</i>	158
SEVERAL , there may be several makers on a note as well as on bill, and several acceptors on bill 179	179
SIGHT , when a bill payable at fixed period after sight, it is payable at a determinable future time 24 when bill accepted at fixed period after sight, not dated, any holder may insist true date of acceptance 39 at bill payable after, is dishonoured and subsequently ac- cepted, holder entitled to have acceptance as of date of first presentation 37 when time begins to run in bill payable at sight, or at fixed period after sight 45 bill payable at or after sight must be presented for accep- tance to fix date of maturity 76 bill at sight negotiated must be presented for acceptance or negotiated within reasonable time 77	24 39 37 45 76 77
SIGNATURE , good if signed by agent 4	4
SIGNATURE on a blank paper delivered to be converted into bill operates as authority to fill up as complete bill, on a blank paper delivered to be converted into a bill, may be used as signature of drawer, acceptor, or endorser, proper signature of drawee may be signed to acceptance though misspelt in bill, or wrongly described therein 31 or name of drawee to acceptance sufficient without more effect of forged signature to bill without authority 31 unauthorized signature may be ratified, ratified signature cannot be ratified 49 49	31 31 35 36 49 49

SIGNATURE— <i>Continued.</i>	SECTION.
of agent by procuration operates as notice of crossing, but limited authority 51	51
how far such signature binds his principal 51	51
to bill, and adding words indicating that signature is for and on behalf of a principal, or in representative character relieves person signing from personal liability 52	52
but the addition of words of identity do not relieve person signing from personal liability 52	52
in determining whether it is that of principal or that of agent, construction most favourable to validity of instrument to be adopted 52	52
party whose signature appears on bill prima facie party to value 58	58
simple signature, without additional words, sufficient 67	67
to a bill in trade name binds person so doing as if he signed his own name 132	132
of name of firm equivalent to signature by person signing of all persons liable as partners in the firm 132	132
cancellation of, on bill discharges party whose signature it is 143	143
<i>See Signing.</i>	
of corporation may be by seal 5	5
SIGNED , before bill has been signed by drawer, it may be accepted 37	37
endorsement must be written and signed 62	62
notice of dishonour need not be signed 99	99
SIGNER , see <i>Signature</i> 31	31
SIGNING may be done as well by person himself as also by person signing for him under authority 4	4
SIMPLE CONTRACT , a consideration sufficient to support, constitutes a valuable consideration for a bill (a) 53	53
SPECIAL , endorsement may be special 65	65
what is a special endorsement (2) 67	67
under special endorsement the provisions of Act applicable to payee, also applicable to endorsee with necessary modifications (4) 67	67
a blank endorsement may be converted into a special endorsement (5) 67	67
crossing a cheque, what it is 168	169
SPECIFIED EVENT , bill payable at fixed period after, certain to happen, is payable at determinable future time, though time of happening uncertain (b) 24	24
SPECIFIED PLACE , see <i>Particular Specified Place</i> .	
SPECIFIED PERSON , when bill payable to order of, same as to him, or his order (2) 22	22
STATED INSTALMENTS , when sum in bill required to be paid in, sum still sum certain (b) 28	28
same, when provision that upon default in one, whole becomes due (c) 28	28
STAMPS , bill issued out of Canada, not invalid for want of stamps, according to law of country of issue 160	160
STRANGER signing bill, otherwise than as acceptor or drawer, renders himself liable as endorser 131	131
STM , when a sum certain within the meaning of the Act 28 payable, alteration of, is a material alteration 146	28

	SECTION.
SUNDAY , bill dated on, not for that reason invalid	27
SUPRA PROTEST , who may protest, and accept bill supra protest, and when, what such an acceptance must be, to be valid	147 151
SUSPENDS , when acceptor suspends holder, before maturity, may protest bill for better security	116
TELLER , in bank, when he must not act as notary	13
TENOR of acceptance, person accepting bill engages that he will pay it according to acceptance	128
a note may be joint, or joint and several, according to its tenor	129 179
THREE days of grace in every case added to bill not payable on demand	42
TIME , when less than three days limited for doing an act “not business days” excluded in court	6
person issuing patent right note without writing words indicating such, liable to imprisonment for one year, of happening of specified event, though uncertain, yet if certain to happen, bill is payable at a determinable future time	16 24
the reasonable time of no consideration in the filling up of an instrument as a bill, when negotiated in hands of “holder in due course”	32
what is “reasonable time” within which instrument filled up as a bill, is question of fact	32
when acceptance qualified as to time, there is qualified acceptance	38
(3) day from which time begins to run, excluded in computing time	44
computation of, to ascertain when bill is payable, when blank paper with signature delivered to be filled up as a bill it must be so filled up within “reasonable time,” to hold prior parties	46 47
one year allowed from discovery of forged endorsement on cheque, to give notice to drawee paying same	49
<i>See Reasonable Time,</i>	
when bill payable on demand and in circulation an unreasonable length of time, deemed to be overdue	70
what is an unreasonable length of time, question of fact, when bill must be presented for acceptance or negotiated within a reasonable time	70 77
what facts are regarded in determining what is a reasonable time	77
(3) in determining what is reasonable time, certain rules to govern	83
allowed for giving notice of dishonour for non payment, alteration of time, when bill payable is a material alteration	126 146
TIME FOR PAYMENT , when not expressed, bill payable on demand	23
three days of grace always added to bill not payable on demand	42
TITLE , notice of defect of title, in person negotiating bill prevents holder from becoming holder in due course	56
when title of person negotiating bill is defective	56
to benefit endorsed vests in transferee for value from holder transferring	61

TITLE. — <i>Continued.</i>	SECTION.
defect of, affecting bill at its maturity, affects title to be negotiated when overdue	70
any taking overdue bill goes and can give only such title as party had from whom he took it	70
defective title existing at time of dishonour attached to bill not overdue in hands of person taking same with notice of dishonour	72
holder of bill in due course holds free from a defect of title of prior parties	74
person taking crossed cheque marked "not negotiable" can only get and only give such title as possessed by person from whom he got it	171
of a stone before defective to crossed cheque, payment of which has been received by bank in good faith, bank not liable to true owner of cheque	175
defect in title holder not affected by, because demand note not presented within a reasonable time after issue	182
 TRADE , person signing bill in trade name, bound as if signing his own name	 132
 TRANSFER , when ownership not transferred in a bill then en- dorsement is restrictive	 68
 TRANSFERABLE , bill may contain words prohibiting transfer when no such words and payable to particular person, then payable to order	 21 22
 TRANSFeree , of patent right note, with notice takes same subject to equities between original parties	 15
when bill so transferred as to constitute transferee the holder, then bill is negotiated	60
for value of bill without endorsement acquires title of holder who transfers	61
for value of a bill not endorsed acquires title of transferer and right to have bill endorsed	61
 "TRANSFeree BY DELIVERY," who is such, and when... what he undertakes and his liabilities	 137 138
 TRANSFERER , see <i>Transferee</i>	 61
 TRUE DATE , what shall be deemed the true date	 29
of issue or acceptance may be inserted by holder in due course, when bill payable at fixed period after date, or at sight and not dated	30
 TWO or more persons endorsing who are not partners, must all endorse unless authority in one to endorse for all ..(2)	 63
 UNAUTHORIZED signature may be ratified	 49
 UNDATED , when bill not dated and payable at fixed period after date, any holder may insert true date of issue	 30
 UNLAWFUL means, when person obtains bill by such his title is defective	 (2) 56
 UNQUALIFIED acceptance, holder entitled to, and can refuse to take qualified acceptance	 83
 UNREASONABLE length of time, demand bill so in circulation defmed, overdue	 (2) 70
time is question of fact	(2) 70

	SECTION.
LIEN , consideration, when bill given for, is void, in hands of holder	59
<i>Contract</i>	59
<i>See Lien, Consideration</i>	59
VALID , may be valid between parties yet not negotiable	21
VALID AND EFFECTUAL , instrument negotiated after com- mencement of bill in hands of holder in due course, valid and effectual for all purposes and against all persons	32
VALID AND UNCONDITIONAL , delivery of bill, when pro- vided for by law	41
VALIDABLE , consideration, how it may be constituted	53
" VALUE ", meaning of expression	2
when statement of, or that any given for bill, does not convey, available	27
when at any time given for bill, holder deemed holder for value, against acceptor and all prior parties	54
when value not received by an acceptor, drawer or endorser from the bill is an accommodation bill	55
holder as to holder in due course must have taken bill for value	56
holder of bill, transferring such for, without endorsing gives transferee his title	58
<i>See also</i> <i>Holder</i>	61
VERBAL , communications may supplement and validate written notice of dishonour	39
VOIDED , bill not voided by insertion of date, though wrong date, if so done by holder in due course	39
WAIVER , notice of dishonour may be dispensed with by waiver	103
when notice may be waived	103
WARRANT for payment of dividend, law as to crossed cheque, applicable to	7
WARRANTY of transfer by delivery	138
WORDS , given for a "patent right" must be written across patent right note	14
when sum expressed in words and figures, amount in words governs	28
<i>See Expressions</i>	
addition of creating and relieving person signing from per- sonal liability	52
"pay costs," meaning of, in crossed cheque	169
WRITTEN , notice of dishonour need not be signed	99
endorsement must be written	62
WRITING , notice of dishonour may be in writing	98
renunciation of right by holder against acceptor must be in writing	142
WRONG DATE , when inserted by holder in mistake shall oper- ate as true date	30
WRONGLY DESIGNATED , when payee or endorsee wrongly designated, how he may endorse	64
YEAR , one year allowed within which to give notice of forged endorsement on cheque from discovery of same	49

ANNOTATIONS.

CHAPTER 119.

Bills of Exchange, Cheques, and Promissory Notes.

INTERPRETATION.

Section 2 (a) "Acceptance." See ss. 35 to 39 inclusive for a definition of the nature and conditions of "acceptance." See clause (f) infra and s. 40 for the meaning and requisites of "delivery" as used in this clause. See s. 39 with reference to "notice" by drawee to person entitled to the bill of his acceptance.

Section 2 (b) "Action." The following sections contain provisions respecting actions: 49, 58, 93, 157 and 183. This clause and clause (k) deal with procedure in provincial Courts, but the Dominion has the right to so interfere. See *Tenant v. Union Bank of Canada* (1894) A. C. 31, and *Grand Trunk Ry. Co. v. Attorney-General for Canada* (1906), 23 L. T. R. 40.

Section 2 (d) "Bearer." See s. 21. "Bearer" is a "holder." See clause (g) infra.

Section 2 (e). As to "Bill," see ss. 17 and 165, and notes thereon. For "Note," see Part IV.

Section 2 (f). "Delivery" . . . from one person to another. See the definition of "person" in the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (20). And see "delivery" in ss. 40 and 41 of the Act.

Section 2 (g). "Holder." Every "bearer" of a bill within the meaning of the definition in clause (d) of this section is the "holder" of it. See *Howard v. Godard* (1860), 9 N. B. R. 452.

Section 2 (ii). An indorsement must be an assignment by somebody who has a right to assign, and it made by a stranger is no indorsement at all. *Tai Yone v. Duan* (1893), 5 B. C. R. 21.

Section 2 (iii). See definition of "valuable consideration" in s. 53.

Section 2 (4). See s. 43, infra, as to "non-juridical days."

PART I.

Section 3. "Good faith" as attempted to be defined by this section, apparently means absence of fraud. "'Bad faith' and 'fraud' are synonymous." Per Coffey, C.J., in *Hilgenberg v. Northup*, 33 N. E. Rep. at p. 787. It is taken from s. 90 of the Imperial Act of 1882 (45 & 46 Vict. c. 61). Cf. ss. 30, 58, 172 and 175 hereof.

Section 5. Before the Act it was decided in Ontario that an instrument in the form of a note signed and sealed was not a promissory note, see *Wilson v. Gates* (1858) 16 U. C. Q. B. 278. See also *Merritt v. Maxwell* (1856) 14 U. C. Q. B. 50; *Merchants Bank v. U. E. Club* (1879), 44 U. C. Q. B. 468. But see as to the liability of a municipal corporation on a promissory note, *Armstrong v. Garafraxa* (1879) 44 U. C. Q. B. 515.

Section 6. "Non-business days" are the non-juridical days specifically mentioned in s. 43.

Section 7. The express provisions of the Act referring to Cheques are found in Part III.

Section 8. See annotations to ss. 76 (a), 76 (c) and (d), and 91 of the Bank Act, c. 29 ante.

Section 10. The "law merchant." "The law merchant, as it is a part of the law of nature and nations, is universal, and one and the same in all countries in the world. . . . There is not one law in England, another in France, another in Spain, another in Germany, but the same rules of reason and the like proceedings of the law mer-

chandise deserved in every nation?" Sir John Davies, "Concerning Impositions" (1656) c. 1, s. 1. "In Edward I's day the 'lex mercatoria' was already conceived as a body of law differing in some respects from the Common Law. Within certain limits it was for the merchants themselves to declare this law. . . . Probably in some respects it took a more liberal and modern view of contractual obligations than that which was taken by the Common Law." Professor Maitland, "Fair of St. Ives, Introd. p. 132 (Sel. Soc. Pub. vol. ii.). "The law merchant is a system of equity, founded on the rules of equity, and governed in all its parts by plain justice and good faith." Per Buller, J., in *Master v. Miller*, 4 T. R. 320. "Some parts of it were undoubtedly borrowed from the Roman law; but when, by whom, and in what circumstances, it is not always possible to say. Never the law of this country, the Roman law was often referred to as a general body of doctrine, suited to supply the deficiencies of the law of every civilized country. The writers on mercantile law, here and on the Continent, sought in Roman law solutions for difficult and novel problems, and often found them." Smith's Mercantile Law (10th ed.), Intro. lxv. And see per Davies, J., in *Bank of Montreal v. The King*, 38 S. C. R., as to the application of the law merchant to a case not provided for by the Act.

Sections 14 and 15. The main provision respecting a note forming part of the purchase money of a patent right, comes originally from the Act 47 Vict. c. 38. The provision in s. 14, s.s. 2, as to the effect of the omission of the words "given for a patent right" was introduced by 53 Vict. c. 33, s. 30. Prior to the latter enactment, it was held that the omission of such words did not render a note void as between the maker and the payee, and that the intention of the Act was to give the indorsee or transferee notice, and to put him in the position of the payee as to any defence which the maker might have against a claim by the payee: *Girvin v. Burke*, 19 Ont. R. 204. When this case was decided the bill which afterwards became the Bills and Notes Act of 1890, was still before Parliament. (See Senate Debates, 1890, pp. 464, 465.)

Jackson v. Martin (1892) 19 Ont. W. R. 502, decided that an estoppel for value given in writing to a party who took a note given for a patent right, or words, with knowledge of the consideration, could not recover. See also *Craig v. Samuel* (1895) 24 S. C. R. 218.

See s. 16 as to penalty for issuing or transferring notes, the consideration of which, in whole or in part is the price or grant of a patent right, without words "Given for a patent right" printed or written across the face thereof.

PART II

BILLS OF EXCHANGE.

Section 17. "An unconditional order." Before the Act the following order was held to constitute a valid bill:—"Mr. Warren, please let the bearer, William Tuke, have the amount of £10, and you will oblige me, B. B. Mitchell;" *Reg. v. Tuke* (1858) 17 U. C. Q. B. 296. But, in Québec, an open letter from one government officer to another, desiring the latter to pay plaintiff a certain sum of money due him by the government, was held not to be a valid bill: *McLean v. Ross* (1816), 3 Rev. de Leg. 434. See also *Jacques Cartier Bank v. The Queen* (1895) 25 S. C. R. 84.

"In writing": See the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (31), where "writing" is extended to include words "printed, painted, engraved, lithographed, or otherwise traced or copied."

Parol evidence is not admissible to vary the obligations of parties as appearing upon the negotiable instrument itself: *Hart v. Davy* (1843), 1 U. C. Q. B. 218; *Hall v. Francis* (1851) 4 U. C. C. P. 210; *Moore v. Sullivan* (1862), 21 U. C. Q. B. 445; *Descelles v. Samoisette* (1888) M. L. R. 4 S. C. 361; *Taylor v. McFarlane* (1878) 12 N. S. R. 190; *Smith v. Squires* (1901), 13 Man. R. 369; *Emerson v. Erwin* (1903), 10 B. C. R. 101; *Moore v. Grosvenor* (1890), 30 N. B. R. 221; *Conley v. Ashley* (1902) 1 Ont. W. R. 701. But parol evidence is admissible to shew real date of instrument

drawee, addressed to date, to make the instrument valid, the drawer was entitled to pay, or treated it as consideration for the instrument. *Notre Dame v. Lawrence* (1891), M. L. L. 4 S. C. 118; *Dowling v. Eastwood* (1889), 30 U. C. J. 22; *Wardrobe v. Sonne*, 29 N. S. R. 509, 16 S. C. R. 711; *Lemire v. Zwicker* (1889), 8 N. S. R. 109. Note also *Reid v. Fonda* (1892), to the same purpose, as to show remuneration being given by one agent to partners liable. *Socdenim v. Bossom* (1889), 16 N. S. R. 509, as to binding effect of counter-pledged agreement in writing.

"Addressed by one person to another." See definition of "person" in Interpretation Act, R. S. C., 1796, c. I, s. 31 (20).

An instrument otherwise regular in form, but not addressed to any drawee is not a bill of exchange: See *Forward v. Thompson* (1854), 12 U. C. Q. B. 103; *McPherson v. Johnston* (1891) 3 B. C. R. 465.

Nor is a warrant signed by a committee of a city council, and addressed to the city treasurer, because drawer and drawee represent the same person: *Charlebois v. City of Montreal* (1898), Q. R. 15 S. C. 96.

A departmental "letter of credit" was held not to be a bill of exchange in *Jacques Cartier Bank v. The Queen*, 25 S. C. R. 81.

"Signed." Signature by a cross or mark is sufficient: *Noad v. Chateauvert* (1846), 1 Rev. de Leg. 229; *Remillard v. Moisan* (1899) Q. R. 15 S. C. 622. But see *Jones v. Hart* (1819) 2 Rev. de Leg. 58.

A signature in the following form: "A. & Co. by A. Junr." prima facie imports that A. signs the instrument for, and not as one of, the firm: *Dowling v. Eastwood* (1846) 3 U. C. Q. B. 376.

"On demand, or at a fixed or determinable future time." In the recent case of *Laforest v. Babineau* (37 S. C. R. 521, affirming 37 N. B. R. 156), the following was held a good promissory note:—

"Edmundston, N.B., July 12, 1899.
\$1,200.

"Received from the Reverend N. P. Babineau, the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per

annum, upon production of this receipt and after three months' notice. (Signed) Fred Laforest."

See ss. 23 and 24 of the Act.

"A sum certain in money." "Money . . . is not necessarily either gold, silver, or paper. It is just what the people of the country, where the instrument is made, choose to treat as money; in other words, as currency. . . . It may be payable in coins, such as guineas, ducats, doubloons, crowns, or dollars, or in the known currency of the country, as in pounds sterling, livres, tournoises, francs, florins, etc., for in all these and in the like cases, the sum of money to be paid is fixed by the par of exchange, or the known denomination of the currency with reference to the par;" See Harrison, C.J., in *Third National Bank of Chicago v. Cosby* (1877), 41 U. C. Q. B. at p. 408.

Held, that a promissory note made in Canada and payable in the United States, and in the currency thereof, was a good promissory note: *Ibid.* "Currency means United States currency," when note payable in United States: *Wallace v. Souther* (1889), 16 S. C. R. 717. See also *St. Stephen Ry. Co. v. Black* (1870), 13 N. B. R. 139; *Dunn v. Allen* (1884), 24 N. B. R. 1; *Northwestern National Bank v. Jarvis* (1883), 2 Man. R. 53.

Quare: Whether an instrument purporting to be a "bill of exchange, payable in New York, " with current funds, if it mean other than lawful money of the United States, is a bill of exchange? *Stephens v. Berry*, 15 U. C. C. P. 548.

The following: "Ten days after date, we promise to pay to M. N. 985.158, (or value received,) upon which when given was endorsed: "It is agreed that the note is to be paid in a lawful negotiable, with interest on the same, having three years to run," held not to be a bill of exchange: *Newman v. Lawrence*, 5 U. C. Q. B. 352; "Toronto, 12th May, 1858. Six months after date, we promise to pay to J. B., or order, \$100 (or value received,) W. W. B., E. W. D. The above note is to be paid in merchantable lumber, to be delivered in Toronto at cash price, and an additional quantity of lumber sufficient to pay the freight is to be sent in. If not so paid within the time, then the same

is to be paid in cash." All this was on the face of the instrument. Held, not a valid note: *Boulton v. Jones* (1860), 19 U. C. Q. B. 517. But see *McKinnon v. Campbell*, 6 U. C. L. J. 58.

A promise to pay in "cash or mortgage upon real estate," not being an absolute promise to pay money, is not a note; nor does it become so by the maker's election to pay in cash: *Going v Barwick* (1857) 16 U. C. Q. B. 45. See also *Downs v. McNamara* (1846), 3 U. C. Q. B. 276; *McRobbie v. Torrance* (1888) 5 Man. R. 114; *Newhorn v. Lawrence* (1848) 5 U. C. Q. B. 359.

A promise to pay a certain sum "with exchange on New York," was held not to constitute a good note, as the amount was rendered uncertain by the uncertainty of exchange: *Fahnestock v. Palmer*, 9 U. C. C. P. 172; and see *Saxton v. Stevenson* (1871), 23 U. C. C. P. 503.

"To the order of a specified person." "Person" includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;" Interpretation Act (R. S. C., 1906, c. 1), s. 34, s.s. 20, annotated ante.

"Or to bearer." See note to s. 21 (3) infra.

Section 17, s.s. 2 ("Act to be done in addition to payment"). In the following cases negotiable instruments were adjudged invalid because of their ordering or promising some act to be done in addition to the payment of money: *Coté v. Lemieux* (1859), 9 L. C. R. 221; *Melville v. Bedell* (1832), Stevens, N. B. Digest, p. 216; *Gillin v. Cutler* (1857) 1 L. C. J. 277; *Sutherland v. Patterson*, 4 Ont. R. 565; *Hall v. Merrick* (1877) 40 U. C. Q. B. 566; *Dominion Bank v. Wiggins* (1894) 21 Ont. A. R. 275; *Prestcott v. Garland* (1897) 34 N. B. R. 291; *Bank of Hamilton v. Gillies* (1899) 12 Man. R. 495; *Imperial Bank v. Bromish* (1895) 16 C. L. T. (Osc. N.) 21.

The provisions of this sub-section are expressly modified by the Act in the case of promissory notes. See s. 176, s.s. 3 and notes infra.

Section 17, s.s. 3 (Unconditional order—Particular fund). See the following cases where instruments held invalid for designating particular fund: *Fullerton v. Chapman*

(1871) 8 N. S. R. 470; Brett v. Lovett (1871) 8 N. S. R. 472; Ockerman v. Blacklock (1862) 12 U. C. C. P. 362; Perth v. McGregor (1862) 21 U. C. Q. B. 459; Bank of B. N. A. v. Gibson (1892) 21 Ont. R. 613. But see Chesney v. St. John (1879) 4 Ont. A. R. 150; Wood v. Shaw (1858) 3 L. C. J. 169.

Section 18 (Payable on contingency). See Dooly v. Ryerson (1874) 1 Q. L. R. 219; Duchaine v. Maguire (1882) 8 Q. L. R. 295; Wood v. Higginbottom (1813) 2 Rev. de Leg. 28; Russell v. Wells (1848) 5 U. C. O. S. 725; Garner v. Hayes (1884) 10 Ont. A. R. 21; Thomson v. Huggins (1896) 23 Ont. A. R. 191.

Section 19 (Payee, drawer or drawee). See Golding v. Waterhouse, 16 N. B. R. 313.

Section 19, s.-s. 2 (Alternative payees). See note to following sub-section.

Section 19, s.-s. 3 (Holder of office). See Imperial Act, s. 7, etc. 2. In the 6th edition of Chalmers on Bills of Exchange, at p. 21, it is said:—"This sub-section materially alters the law. Before its enactment a bill drawn payable to the 'treasurer for the time being' of a society was void for uncertainty; so, too, was a bill drawn payable 'to the order of T. Smith or S. Jones,' unless there was apparent community of interest." The cases are conflicting in Canada, but it is not useful to collect them in view of the clear meaning of the text.

Section 20 (Drawee to be named). See note to s. 26, infra.
"Reasonable certainty." See Peto v. Reynolds (1854) 9 Exch. 410 and 11 Exch. 418. Cf. Goirand's French Code of Commerce (2nd ed.), p. 180 et seq. Cf. Alexander v. Sizer (1869) L. R. 4 Ex. at p. 105.

Section 21 ("Transfer"). The words "non-negotiable and given as security," written on the face of the note, deprives it of its essential characteristic as a promissory note, and it becomes a mere contract of suretyship: Davis v. Robertson, Q. R. 6 Q. B. 264.

In an Ontario case, decided before the passage of the Bills of Exchange Act, it was held that although the note was not negotiable, the indorser was entitled to recover from the maker, because even if the note was intended by the maker to have been made negotiable, and was issued by him in good faith, mistake or inadvertence, it was not expressed to be payable to the order of the payee: *Harvey v. Bank of Hamilton*, 16 S. C. R. 714. Cf. *Goirand's French Code of Commerce* (2nd ed.), p. 181, et seq.

Section 21, ss. 3 (Payable to bearer). A cheque payable to C. M. & S., or bearer, was indorsed by them, and stamped for deposit to their credit in a bank. The clerk, instead of depositing it, drew the funds, the teller not observing the special indorsement. Held, that as the "bearer" (the clerk) was entitled to receive payment, the bank which paid was not liable: *Exchange Bank v. Quebec Bank* (1890), M. L. R. 6 S. C. 10. See, however, s. 68, clause 2, which would seem to make such an indorsement a restrictive one.

Section 21, ss. 4 ("Reasonable certainty"). See note to s. 20, supra.

Section 21, ss. 5 ("Fictitious person"). Cf. s. 4, ss. 3 of the Imperial Act. The draughtsman of that Act, Chalmers (Bills of Exchange, 6th ed., p. 22), says: "This subsection was inserted in committee in place of a clause working out in detail the effect of the case." See the ruling case upon the interpretation of the section: *Bank of England v. Vagliano Bros.*, [1891] A. C. 107, reversing s. c. in 23 Q. B. D. 243. See also the discussion of the case in *Law Quarterly Rev.*, vol. 7, p. 210, and in vol. 10, p. 40. See also the Canadian case of *London Life Insurance Co. v. Molsons Bank*, 8 Ont. L. R. 238.

Section 22 (Payable to order). This provision changes the law in Canada as expounded by such cases as *West v. Brown*, 1 U. C. Q. B. 290; *Harvey v. Bank of Hamilton*, 16 S. C. R. 714; *Jones v. Whitty*, 9 L. C. R. 191; *McCorkill v. Barrabé*, M. L. R. 1 S. C. 319. See *Mallette v. Sutcliffe*,

Q. R. 5 S. C. 139; Desy v. Dasy, Q. R. 12 S. C. 183; Ward v. Quebec Bank, Q. R. 5 Q. B. 122.

Section 22, s.s. 1. See Myers v. Wilkins, 6 U. C. Q. B. 421; Newton v. Allen, 2 Rev. de Leg. 29.

Section 23 (Payable on demand). Demand bills are not entitled to day of grace: See s. 42 of the Act.

Section 24 (a) (Sight bills). Sight bills are entitled to days of grace: See s. 42 of the Act.

Section 24 (b) (Specified event). See Hogg v. Marsh, 5 U. C. Q. B. 319; Massey Mfg. Co. v. Perrin, 8 Man. R. 455.

Section 25 (Inland bill). These provisions do away with the rule observed in McLellan v. McLellan, 11 U. C. C. P. 197, that a bill or note made in one province and payable in another is to be treated as foreign. They also override any pre-existing provincial legislation relating directly to, as to promissory note, s. 147 infra.

Section 25, s.s. 1 (Presumption of inland character). The advantage to the holder under this provision is that an inland bill need not, except in Quebec, be protested if dishonoured. See s. 433 infra.

Section 26 (Drawer and drawee). In such a case notice of dishonour need not be given as regards the drawer. See ss. 92 and 101. ("Fictitious person"). Cf. note to s. 21, s.s. 5. See the English case—*Sir Alexander Balfour, 2 Star., 22*.

Section 27 (Defects not fatal). (a) "Date"—Presumed to be dated on day made: See English case of *Hague v. French*, 3 B. & P. 173. Proof of date by parol: See English case of *Davis v. Jones*, 17 C. B. 625.

(b) "Value received"—Effect of: *Lafarge v. Franklin County Bank*, 8 L. C. R. 328. But where these words are used, parol evidence is admissible to prove contrary: *Davis v. McSherry*, 7 U. C. Q. B. 490; *Baxter v. Bildeau*, 9 Q. L. R. 268.

- (c) Place payable: See s. 93, *infra*, and notes.
- (d) Irregular date—"Post-dated?" See *Forster v. Mackreth*, L. R. 2 Ex. 163; *Royal Bank v. Tottenham*, [1894] 2 Q. B. 515.
"Sunday." See *Begbie v. Levi*, 1 Cr. & J. 180; *Houliston v. Parsons*, 9 U. C. Q. B. 681; *Crombie v. Overmoltzer*, 11 U. C. Q. B. 55.

Section 28 ("Sum certain"). See notes to s. 17 *supra*.

- (a) ("With interest"). See *R. S. C. 1906*, s. 120; *R. S. C. 1906*, c. 122. And see *Young v. Fluke*, 15 U. C. C. P. 360.
- (b) ("Stated instalments"). See *Bercon v. Central Bank*, 10 N. B. R. 493; *McQueen v. McQueen*, 9 U. C. Q. B. 536; *Clearhume v. Morris*, 2 Rev. de Leg. 30.
- (d) ("With exchange"). See *Third National Bank of Chicago v. Crosby*, 13 U. C. Q. B. 58. See also note to s. 17 *supra*.

Section 28, s.s. 3 (Date from which interest runs). See *Howland v. Jennings*, 11 U. C. C. P. 272; *Dechantal v. Pominiville*, 6 L. C. J. 88.

(Interest after maturity). See s. 131, *infra*, and notes.

Section 31 (Inchoate instruments). Liability of maker: See *McInnes v. Milton*, 10 U. C. Q. B. 89; *Ford v. Auger*, 18 L. C. J. 296; *Banc. of Nova Scotia v. Marquis*, M. L. L. 6 S. C. 324; *Benton v. Gorlin*, 5 B. C. R. 654; *Re'st. Columbia L. & L. Agency v. E. H. G. B. C. R. 801*; *John Safety Co. v. Porter*, 7 N. B. R. 279.

Liability of indorser: See *Sandford v. Ross*, 6 U. C. O. S. 101; *Rossin v. McCarty*, 7 U. C. Q. B. 100; *Dorwin v. Thompson*, 13 L. C. J. 262.

(Note obtained by fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it, the signer was held not liable: *Banque Jacques Cartier v. Lescard*, 13 Q. L. R. 39. But see the cases cited under following section.

Section 32 (written in due course). As to exemption from restrictions as to "time" and "authority" in next preceding section: See *Hanscom v. Gorham*, 15 U. C. Q. B. 12; *Metzger's Bank v. Groves*, 6 Man. R. 303; *First Nat'l Bank v. McLean*, 16 Man. R. 62.

Section 33 (exemption in case of need). By Art. 2 d o. C. C. L. C. (prior to 1900) "in case of need" (or "when all else fails") was construed as follows: "If the bill is in due course and there is no draft or sum therein presented, a protest must be made (R. v. C. Bradbury, c. from 3180.)"

ACCEPTANCE AND INTERPRETATION.

Section 35 (Acceptance). See *Madden v. Cox*, 5 Ont. A. R. 473; *Campbell v. Mackay*, 21 N. S. R. 401; *Quebec Bank v. Milne*, 3 Man. R. 17; *Laing v. Taylor*, 26 U. C. C. P. 116; *Robertson v. Glass*, 20 U. C. C. P. 250; *Foster v. Geddes*, 14 U. C. Q. B. 239; *Bank of Montreal v. De Latre*, 5 U. C. Q. B. 362; *Bank of Montreal v. Smart*, 10 U. C. C. P. 15; *McDougall v. McLean*, 1 Terr. L. R. 450.

Section 36 (a) (Acceptance in writing). Must be on the bill. But see *Bank of Montreal v. Thomas*, 16 Ont. R. 503, and compare *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 214.

Section 38 (Character of acceptance):

(a) General acceptance: See *Commercial Bank v. Johnston*, 2 U. C. Q. B. 126; *Bank of Upper Canada v. Parsons*, 3 U. C. Q. B. 383; and compare *Fanshawe v. Peet*, 26 L. J. N. S. Ex. 314.

(b) Qualified acceptance: See *Milne v. Prest*, 4 Camp. 393; *Smith v. Virtue*, 30 L. J. C. P. 56; *Julian v. Shobrooke*, 2 Wils. 9.

Section 38, s.s. 3 (a). Conditional acceptance: See *Bradbury v. Oliver*, 5 U. C. O. S. 703; *McLean v. Shields*, 1 Man. R. 218; *Potters v. Taylor*, 20 N. S. R. 362; *Dufresne v. Jacques Cartier Bdg. Soc.*, 5 R. L. 235; *Ontario Bank v. McArthur*, 5 Man. R. 381.

Section 39 (Acceptance complete). See *Brown v. Howland*, 9 Ont. R. 48; 15 Ont. A. R. 750.

DELIVERY.

Section 40 (b) (Conditional delivery). See *Ontario Bank v. Young*, 2 Ont. L. R. 761; *Chandler v. Beckwith*, 2 N. B. R. 423. And see *Commercial Bank of Windsor v. Morrison*, 32 S. C. R. 98; *Jenks v. Doran*, 5 Ont. A. R. 558; *First National Bank v. McLean*, 16 Man. L. R. 32.

COMPUTATION OF TIME, ETC.

Section 46 (Due date). See *Drapeau v. Pominville*, Q. R. 11 S. C. 326, where it was held that a promissory note dated 7th November, 1895, and payable "21st November, next," was to be taken as payable on the 21st November, 1896, and not on that date in 1895.

CAPACITY AND AUTHORITY OF PARTIES.

Section 47 (Capacity). See s. 30, Interpretation Act, as to powers of federal corporations. As to provincial corporations, Maclaren on Bills, 3rd ed., 125, gives list of general Acts of respective provinces, and at page 127 cases as to powers thereunder.

Unless power is expressly conferred by will, executor cannot pledge credit of estate by indorsing accommodation notes to establish or advance the interests of beneficiaries: *Lionais v. Molsons Bank*, 10 S. C. 526.

Section 48 (Effect of disability). Holder of note payable to a society or bearer may recover from maker though society could not indorse or transfer notes: *Hammond v. Small*, 16 U. C. Q. B. 371.

Note made by infant indorsed by his father, who was of unsound mind and unable to understand what he was doing. Indorser received no consideration and person to whom note was given was not aware of his condition. Indorser's estate not liable. *In re James*, 9 Ont. P. R. 88.

Section 51 (Forgery, etc.). Forgery of note cannot be ratified: *Merchants' Bank of Canada v. Lucas*, 18 S. C. 704, affg. 10 Ont. A. R. 566.

Parties whose names were forged as makers of a note on receiving notice from the bank discounting it, that it will fall due on a day named, and asking them to provide for it, held estopped from denying their signature when they did not at once notify the bank, telephone or telegraph, that it was forged: *Ewing v. Dominion Bank*, 35 S. C. 133.

Bill drawn by a company to their own order was paid by acceptor who had previously discovered that the name of the company was forged as drawer and also as indorser. Held, that though acceptor was estopped from denying the signature of the company as drawer, he was not estopped from denying their signature as indorser and could recover the amount of the bill from the bank which discounted it: *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. A. R. 533. And see *Rex v. Bank of Montreal*, 10 Ont. L. R. 117; 11 Ont. L. R. 595, affirmed by Sup. Court, 19th February, 1907.

Acceptor not barred by delay when there was no party to the bill against whom the bank could have recourse: *Ryan v. Bank of Montreal*, supra.

President of company without authority from directors made a note signed "S. President" with seal attached, and had it discounted by private bankers. S. was a defaulter to company of more than the amount of the note. Held, company could not repudiate liability on note and also recover amount of same from bankers: *Bridgewater Cheese Factory Co. v. Murphy*, 26 O. R. 327; 23 Ont. A. R. 66; 26 S. C. 443.

Section 51 (Procuration). Acceptance or indorsement "per pro." puts taker on inquiry as to extent of acceptor's or indorser's authority: *Bryant v. Banque du Peuple* [1893] A. C. 170.

If he has authority abuse of it does not affect bona fide holder for value: *Ib.*

Section 52 (Representative capacity). Bill drawn by "A. Art." or and accepted by principal. Drawer personally liable: *Reid v. McChesney*, 8 U. C. C. P. 50.

Also assigned by partnership without authority to have notes for £ 1,000,000 signed notes with "Assignee" altered as name: *Boyd v. Mortimer*, 6 O. R. 299.

Inspector of Insurance Company who signed note to "A. Seamer, Inspector" or instead of proper holder's claim for less than personally due: *Hazlitt v. Squier*, 12 U. C. Q. B. 165.

If a trade note was signed by manager of L. Co. individual members of the company were held liable: *Fairchild v. Ferguson*, 21 S. C. 651. And see *Brown v. Howland*, 15 Ont. A. R. 151, affirming 9 O. R. 484; *Madden v. Cox*, 5 Ont. A. R. 133, affirming 11 U. C. Q. B. 542.

CONSIDERATION.

Sections under this head apply also to promissory notes. See s. 186.

Section 53 (Valuable). Note to secure amount of fraudulent preference from an insolvent to a particular creditor is wholly void: *Brigham v. Banque Jacques-Cartier*, 30 S. C. 429.

Joint and several note of partners given as collateral to mortgage. Partnership being dissolved partner continuing business received discharge of mortgage but without paying debt. Other partner not liable on note unless holder could convey mortgaged lands to him on payment: *Allison v. McDonald*, 23 S. C. 635.

Plea that note was given in consideration of forbearance to proceed with prosecution for felony. Held, that particular nature of charge should be proved: *Henry v. Little*, 11 U. C. Q. B. 296. See *Toponce v. Martin*, 38 U. C. Q. B. 411.

Machinery sold, part of price being paid in cash, balance by note, property not to pass until balance was paid. Before note was paid machinery was destroyed by fire. Held, purchaser was liable on note: *Goldie & McCullough Co. v. Harper*, 31 O. R. 284.

Partial failure of consideration no defence: *Dixon v. Paul*, 4 O. S. (U.C.) 327; *Hill v. Ryan*, 8 U. C. Q. B. 143. And see *Kilroy v. Simkins*, 26 U. C. C. P. 281; *Primeau v. Mouchelin*, 15 Man. 360.

Contract consideration proved less beneficial than represented: *Dutton v. Laroche*, 10 O. S. 46.

But damages may be reduced for partial failure: *McGregor v. Bishop*, 11 O. R. 7; *O'Brien v. Fenton*, 18 U. C. Q. B. 211.

A preexisting debt is a good consideration: Among a mortgage on real estate is given to secure same: *Bank of Upper Canada v. Bartlett*, 12 U. C. C. P. 238.

Preexisting debt the same as new consideration: *Evans v. Morley*, 21 U. C. Q. B. 514.

Agreement not to proceed with prosecution for permitting gambling in tavern an legal consideration: *Dwight v. Ellsworth*, 9 U. C. Q. B. 539. And see *Doyle v. Carroll*, 28 U. C. C. P. 218; *Bell v. Riddell*, 10 Ont. A. R. 514.

Antecedent debt good consideration for note transferred as collateral security, and may be enforced by bona fide holder for value though void for illegality as between maker and payee: *Canadian Bank of Commerce v. Gurley*, 30 U. C. C. P. 583.

Notes given in payment of subscription to stock in proposed company the objects and purposes of which, through no fault of maker, were never carried out, and company never formed. Held, a total failure of consideration: maker not liable on notes and entitled to recover back amount of one which he had paid: *Bullion Mining Co. v. Cartwright*, 10 Ont. L. R. 438.

No action lies on note or renewal given to raise funds to promote election in Quebec: *St. Pierre v. L'Ecuier*, Q. R. 23 S. C. 495.

There was no consideration for a note given in payment of premium on an insurance policy on which the insurers would not be liable, as insured was not owner of the property covered though he had believed he was: *Mutual Assur. Co. v. LeMay*, Q. R. 12 S. C. 232.

After debtor has compromised with a creditor his natural obligation to pay balance of debt is good consideration for a note to obtain further credit: *Bédard v. Chaput*, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: *Proctor v. Parker*, 12 Man. 528. And see *McGregor v. McKenzie*, 30 N. S. 211, as to forbearance to sue.

Section 55 (Accommodation). Two makers of note, one signing for other's accommodation. After maturity third party signed it. Held, that latter was additional maker and note was materially altered so as to displace accommodation maker: *Carruth v. Gauvin*, 21 Ont. A. R. 302, reversing 28 O. R. 175.

Section 56 (Holder in due course). Indorsement of note in blank and maker's name afterwards signed without authority. Indorsee suing must prove that he is bona fide holder for value: *Hanscome v. Cotton*, 15 U. C. Q. B. 12; 16 U. C. Q. B. 98.

Holder of notes transferred by payee as collateral security against future liability for the latter can collect them at maturity though liability has not arisen: *Ross v. Tyson*, 19 U. C. C. P. 294.

Note indorsed in blank deposited in bank as collateral security for an account. Name of bank was stamped over indorser's name, and account having been transferred to another bank the name of latter was stamped over that of the other, whose manager initialled the transfer. Held, that second bank was holder in due course of the note: *Sovereign Bank v. Gordon*, 9 Ont. L. R. 116. See also *Gauthier v. Reinhardt*, Q. R. 26 S. C. 134.

Section 57 (Subsequent holder). Indorsee without value can recover on a bill or note if any intermediate party is a holder for value: *Wood v. Ross*, 8 U. C. C. P. 299.

Holder in good faith, for value and without notice, cannot recover against maker of note where evidence does not clearly shew that he signed it and establishes that if he did it was in the belief, induced by false representations of agent of payee, that he was signing a petition to Government: *Alloway v. Hrabi*, 14 Man. 627. And see *Banque Jacques-Cartier v. Lalonde*, Q. R. 20 S. C. 43.

S. on 58 (Presumption of value). Party other who signs note for value on debts in customers' accounts in which he may have personal interest, being coerced by the manager or accountants of dismissed and criminal prosecution, held not liable thereon: Western Bank of Canada v. de Goff, 32 S. C. 681.

Failure of its approving officer to inspect where no one else is called to do so, good consideration of accommodation paper: Merchants National Bank v. Ontario Coal Co., 16 Ont. P. R. 87.

Nor of note indorsed in blank: Ridgeway v. Dansemeur, Q. R. 17 S. C. 156.

Vote given by insolvent to creditor who makes it a condition of signing deed of composition is valid as between the parties, but good in hands of bona fide holder for value without notice: Bellemare v. Gray, Q. R. 16 S. C. 581, affirmed in review, Fisher v. Genster, Q. R. 15 S. C. 605.

The same as to cheque given for gambling debt: Dion v. Lachance, Q. R. 14 S. C. 77.

After a debtor has compromised with his creditors obligation to pay balance of one of such debts is good consideration for a note given to the creditor for further credit: Bédard v. Chaput, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: Proctor v. Parker, 12 Man. 528.

NEGOTIATION.

Section 60 (By transfer). A bon though not payable to order is negotiable and may be transferred by indorsement unless the contrary is expressed: Désy v. Daly, Q. R. 12 S. C. 183.

Section 61 (Without indorsement). See Dupuis v. Marsan, 17 L. C. J. 42; Guerin v. Orr, 5 L. N. 379; Contu v. Raferty, M. L. R. 7 S. C. 116; Vandal v. Douville, 20 R. L. 305.

Section 62 (Indorsing). Indorsement may be on any part of bill: Carrique v. Beaty, 28 O. R. 175.

Section 65 (Order of indorsements). An agreement that indorsers shall not be liable in order: *Elder v. Kelly*, 8 U. C. Q. 3, 240; *McLean v. Garrier*, 11 N. S. 132; *Lovette v. Daigle*, 2 Ont. 129; *Deschaamps v. Leger*, M. L. R. 3 S. C. 1.

Section 66 (Conditional indorsement). Note given in express understanding that it should only be payable on happening of a certain condition does not bind indorser if condition is not fulfilled: *Commercial Bank of Windsor v. Morrison*, 32 S. C. 98. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Section 68 (Restrictive indorsement). See *Barthe v. Armstrong*, 5 R. L. 243; *Munro v. Cox*, 30 U. C. Q. B. 363; *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

Section 70 (Overdue bill). Where agent of holder disposes of overdue note without authority, though for good consideration, transferee obtains no title as against principal: *West v. MacInnes*, 23 U. C. Q. B. 357.

Valid agreement to give time an equity attaching to bill as against person taking it after maturity: *Britton v. Fisher*, 26 U. C. Q. B. 338. Also agreement not to negotiate after maturity: *Grant v. Winstanley*, 21 U. C. C. P. 257.

Bonâ fide holder acquiring bill after dishonour takes it subject to equities of all parties having interest: *Young v. MacNider*, 25 S. C. 272. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Understanding between indorser and payee that former is not to be held liable an equity attaching against person taking after maturity: *McQuin v. Sorell*, 2 All (N.B.) 140.

Also note given as a gift to son by way of advancement: *Thomas v. McLeod*, 1 Han. (N.B.) 588. And agreement to let board bill go in reduction: *Ching v. Jeffery*, 12 Ont. A. R. 432.

Indorsee only liable to equities attaching to bill itself: *Wood v. Ross*, 8 U. C. C. P. 299.

Section 72 (Dishonoured bill). Agreement between maker and payee that note shall be used for a particular purpose only constitutes an equity attaching, if it is used in violation of agreement, in hands of bona fide holder for value who takes it after dishonour: *MacArthur v. MacDowell*, 23 S. C. 571.

Section 73 (Re-issue). See *Cuvillier v. Fraser*, 5 U. C. Q. B. 152; *Black v. Strickland*, 3 O. R. 217; *Hovey v. Nolin*, 18 R. L. 439.

Section 74 (Rights of holder). A bank discounting a note in form not negotiable but intended to be so when made, may recover from makers: *Harvey v. Bank of Hamilton*, 16 S. C. 714; 9 O. R. 655, aff'd.

Clerk in office of attorney with whom note indorsed on blank was left for collection may sue though having no interest: *Shepley v. Hurd*, 3 Ont. A. R. 549; *Mills v. Philbin*, 3 Rev. de Leg. 255; *Ridgeway v. Dansereau*, Q. R. 17 S. C. 176. And see *Street v. Quinton*, 18 N. B. 567.

Insurance agent can sue on note given for premium: *McDonald v. Smail*, 25 N. S. 440.

Note given for lottery tickets not void: *Evans v. Morley*, 21 U. C. Q. B. 547.

But is if given for gambling debt: *Biroleau v. Derouin*, 4 L. C. J. 128; *Contra, Dion v. Lachance*, Q. R. 11 S. C. 55.

PRESENTMENT FOR ACCEPTANCE.

Section 75 (When necessary). Sub-section 2 is new law in Ontario. See *Richardson v. Daniels*, 5 U. C. O. S. 671.

Section 77 (Sight bill). What is "reasonable time" is a mixed question of law and fact: *Perley v. Howard*, 2 Kerr (N.B.) 518.

As to what constitutes reasonable time see *Boyes v. Joseph*, 1 U. C. Q. B. 505; *Harris v. Schowb*, 3 R. L. 453; *Wyde v. Wetmore*, 1 G. & O. (N. S.) 505.

PRESENTMENT FOR PAYMENT.

Section 85 (Necessity). Presentment necessary to collect notes, because due by drawee's delivery at maturity; *Banque Nationale v. Martel*, Q. R. 17, 28, C. 64.

Presentment of paper held out to collector before payment; *Gauthier, P. L. N. v. [?]* *Doran v. Codles*, 2 A. C. C. P. 107.

Section 87 (By whom). Non-presentment before stop; *Section of Bank*; *Bailey v. McCord*, 16 Ont. A. R. 269.

Law of Lower Canada same as that of Ontario and England; *McLellan v. McLellan*, 17 U. C. C. P. 109.

Presentment at bank after hours not sufficient in Quebec; *Watters v. Reiffenstein*, 16 L. C. R. 261.

Not at a store after business hours in New Brunswick; *Patterson v. Tapley*, 4 A. C. (N.B.) 292. But if made at store closed at 5 p.m., it is good; *Reed v. Kavanaugh*, 4 A. C. 154.

As to case of drawee or acceptor being dead; *Dana v. Bradley*, 5 Ad. (N.B.) 292.

Section 88 (Place of presentation). Change of address. Diligence; *Browne v. Boulton*, 9 U. C. Q. B. 6.

Due diligence. Bank's liability for failure to present; *Browne v. Commercial Bank*, 10 U. C. Q. B. 124.

Note payable at particular place need not be presented there at maturity to charge maker with non-payment; funds to meet it. Maker should keep funds there until presentation; *Merchants Bank of Canada v. Henderson*, 28 Q. R. 360.

If bank at place of payment at maturity is sufficiently presented; *Merchants Bank v. Mulvey*, 6 Man. 463.

Section 89 (No person at place). See *Beecher v. Amherstburg*, 23 U. C. C. P. 602; *McRobbie v. Torrance*, 5 Man. 111.

Section 91 (Delay). Valid excuse; *Union Bank v. McMilligan*, 4 Man. 29.

Section 92 (Viscense with). Not in case of indorsement after maturity; *Davis v. Burn*, 6 U. C. Q. B. 221. Not

discharge of acceptor. Qd. v. Bank, 192, 59, 3 D.O.P., 1900; see sufficiency of notice and notice without a reading. 2 K.C. v. S. & Co., Waverley, McCarter v. Phelps, 30 C. C. Q. D., 11, City Bank v. Hartnett, 100, 10, 1 D.O.P.; Whitehead v. Beech, 126 N.B.R. 16; Dering v. Haydon, 3 Man. 211. And see Badgely v. McCarter, 16 Ont. A.R. 2, 10, 10, 10; Bank of Gibraltar, 12 Q. L. R. 106.

Section 163 (Specie received). See O'Brien v. Stevenson, 15 L. C. L. 155; Crepeau v. Moore, 8 Q. L. R. 197; Ratchford v. Groota, 2 Keir (N.B.) 142; Biggs v. Wood, 2 Man. 272.

DISHONOUR.

Section 171 (Notice). Where indorser or note died before it became due, notice of dishonour addressed to him at a place where it was dated, the holder not knowing of his death, was sufficient and binding on his executors; Cosgrave v. Boyle, 6 S. C. 165. And see Hay v. Burke, 16 Ont. A.R. 363.

Where holder and indorser resided in same town notice addressed to attorney who note was dated and re-deposited in the post office was sufficient though record of same was not proved; Merchants' Bank of Halifax v. McNutt, 11 S. C. 426.

Indorser of note as surety for her husband died testate before maturity. Notice addressed to husband since heir of last will of M. A. Bell, trustee, was sufficient; though he was not then in existence, though he had not administered; Merchants' Bank v. Bell, 27 Ont. 14. And see Reps. v. Marsh, 1 L. C. C. P. 158.

Section 178 (Non-sites). Notice to husband as agent of wife sufficient; Counsel v. Livingston, 2 Ont. L. R. 582, 1909, L. R. 330.

Notice by telegram; McLean v. Garver, 15 N. S. 276.

Writ of summons not noted or filed, served on day note was dishonoured by Commercial Bank v. Allan, 19 Man. 343.

Section 180 (Sufficiency of notice). Death of indorser; Cosgrave v. Boyle, 6 S. C. 165.

By mail though holder and indorser were in same room; Merchants Bank of Halifax v. McNeil, 11 U. S. C. 129.

Notice not stale if note and notice presented for payment before maturity date; 14 U. S. C. Q. B. 56.

No objection that notice is stale; *in Simeon v. Indorser* not raised by indorser's counsel; *Cassidy v. Mansfield*, 20 U. C. C. P. 683; *Loy v. Olson*, 12 U. C. C. P. 101.

Mistake in amount. Subsequent promise to pay; *Thompson v. Cotterell*, 14 U. C. Q. B. 104.

Place may be designated by party entering his signature "through another person"; *in Indorser*, 16 U. C. A. R. 463.

Notice sent to place designated without though sender knows it is not indorser's usual place of residence or business; 1b.

Notice to wrong address given by name of indorser sufficient; *Vaughan v. Ross*, 8 U. C. Q. B. 396; *McMurrich v. Powers*, 16 U. C. Q. B. 4.

Section 106 (Notice dispensed with). Indorser of dishonored note told holder that he would endeavor to meet it and afterwards told him he had seen a man who agreed to pay as soon as he could, and requested him not to "crowd the note." This notice dispenses with notice of dishonor; *Britton v. Milson*, 17 U. C. Q. B. 96. And see *Fraser v. McLeod*, 1 U. C. Q. B. 101.

But where indorser writes "I will endeavor to make latter achieve notice" or "I will endeavor to make notice" when he states that he will endeavor to make notice of dishonor; *Beckett v. Ginn*, 17 U. C. Q. B. 1.

The conditional promise to pay is not sufficient if it uses nothing, waves, etc., or if it says "will pay" to pay; *Shaw v. Salmon*, 19 U. C. Q. B. 103; *Leath v. O'Neill*, 19 U. C. Q. B. 273; *McCarty v. Thompson*, 19 U. C. Q. B. 57. As to request for notice, *Borden v. Montreal v. Scott*, 24 U. C. Q. B. 115.

ROLLS.

Section 113 (Expense). Notice of protest must be given before note becomes due by insolvency of maker and acceptor: *Banque Nationale v. Martel*, Q. R. 15 S. C. 95. And see section 114.

Section 114 (Delay excused). Curator to cession de biens n'a le droit d'agir to waive protest of note indorsed by insolvent maker: *Molsons Bank v. Steele*, Q. R. 23 S. C. 316; *Deneuve v. Mendelssohn*, Q. R. 22 S. C. 174, affirmed by 23 S. C. 128. *Contea: In re Boucic*, Q. R. 12 S. C. 180.

Indorsing on note "I hold myself responsible for my note" is waiver of protest: *Ranger v. Animais*, 5 Que. P. R. 450. And see *McLaurin v. Seguin*, Q. R. 12 S. C. 63.

Section 116 (Better security). Where maker and indorser both become insolvent holder may proceed against both, but before proceeding against indorser should protest note: *Banque Nationale v. Martel*, Q. R. 15 S. C. 95.

LIABILITIES OF DRAWERS.

Section 117 (Equitable assignment). Unaccepted cheque not an equitable assignment: *Caldwell v. Merchants Bank*, 26 U. C. C. P. 294. But otherwise in Quebec: *Marler v. Molsons Bank*, 23 L. C. J. 293.

Section 128 (Engagement by acceptance). Drawee promising to accept or obtaining benefit of funds: *Torrance v. Bank B. N. A.* 15 L. C. J. 169; 17 L. C. J. 185; *Dunstan v. Molsons Bank*, 23 L. C. J. 57; *Bank of Montreal v. Thomas*, 16 O. R. 503.

Acceptor liable where drawee's signature forged: *Rex v. Bank of Montreal*, 11 Ont. L. R. 595, affirming 10 Ont. L. R. 117. Affirmed by Sup. Court 19 Feb., 1907; *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. L. R. 533.

Validity of indorsement where bill is indorsed before acceptance: *Ryan v. Bank of Montreal*, supra.

Section 129 (Hopper). Applies also to notes. Section 186.

Indorser or note purporting to be drawn by corporation estopped from claiming it was ultra vires of the makers: Merchants Bank v. United Empire Club, 14 U. C. Q. B. 468.

Section 131 (Irregular indorsement). Applies also to notes; see section 186.

Surety for a debt wrote his name across back of note made by debtor. Being sued as maker there was no evidence that he intended to become such. Held, that he might have been liable as indorser had notice of dishonour been given: Ayr American Plough Co. v. Wallace, 21 S. C. 256.

Promissory note made by two persons, one signing for accommodation of the other. After maturity it was signed by a third person. Held, that latter signed as maker not indorser: Carrique v. Beaty, 24 Ont. A. R. 302, reversing 28 O. R. 175.

Where note payable to person named is indorsed by another before delivery to payee, former is liable as indorser to holder in due course: Duthie v. Essery, 22 Ont. A. R. 191; Robinson v. Mann, 31 S. C. 484, reversing 2 Ont. L. R. 63.

But where person signed his name on back of note and payees afterwards indorsed it "without recourse" he was not liable to the latter as indorser, surety or otherwise: Canadian Bank of Commerce v. Perram, 31 O. R. 116. And see Small v. Henderson, 27 Ont. A. R. 192; Craig v. Matheson, 32 N. S. 452.

Section 132 (Trade name). Note signed "R. Manager R. L. Co." Individual members of company held liable: Fairchild v. Ferguson, 21 S. C. 484.

Section 133 (Indorser). See Small v. Riddel, 31 U. C. C. P. 373; Poisson v. Bourgeois, Q. R. 17 S. C. 94; McRae v. Lionais, Q. R. 16 S. C. 262; McLeod v. Carman, 1 Han. (N.B.) 602.

Section 131 (Measure of damages). Note carrying interest at rate of "two per cent. per month until paid" only bears legal rate of six per cent. after judgment: *St. John v. Rykert*, 10 S. C. 278. And see *Powell v. Peck*, 15 Ont. A. R. 138; *Grant v. People's Loan & Deposit Co.*, 18 S. C. 262.

Section 137 (Transfer by delivery). Transferror liable on consideration of transfer: *MERCHANTS BANK v. WHIDDEN*, 19 S. C. 53; *Mitchell v. Holland*, 16 S. C. 687.

Transferee must use reasonable diligence: *Conn v. Merchants Bank*, 30 U. C. C. P. 380.

Section 138 (Warranty by transfer). See *Lewis v. Jeffery*, M. L. R. 7 Q. B. 141; *Miller v. Daudelin*, 24 L. C. J. 208.

DISCHARGE OF BILL.

Section 139 (Payment). Taking note of new firm for goods sold to old: *Watts v. Robinson*, 32 U. C. Q. B. 362.

Credit in bank books: *Nightingale v. City Bank*, 26 U. C. C. P. 74; *Cleveland v. Exchange Bank*, 31 L. C. J. 126; *Goodall v. Exchange Bank*, M. L. R. 3 Q. B. 430.

Course of dealing: *Birkett v. McGuire*, S. C. Dig. 1030, reversing 7 Ont. A. R. 33.

Presumption by possession of note: *McKenzie v. Frizzell-Ramsay*, A. C. 77; *Stephenson v. Miller*, 27 N. B. 42.

Acceptance of renewal: *Murray v. Gastonguay*, 13 N. S. 319.

Set-off: *Wood v. Ross*, 8 U. C. C. P. 299; *Smith v. Nicholson*, 19 U. C. Q. B. 27.

Compensation in Quebec: *Amazon Ins. Co. v. Quebec & G. P. S. S. Co.*, 2 Q. L. R. 310; *Quintal v. Aubin*, M. L. R. 1 S. C. 397; *Exchange Bank v. Canadian Bank of Commerce*, M. L. R. 2 Q. B. 476; *Riddell v. Goold*, M. L. R. 5 S. C. 170; *Lapage v. Hamel*, 19 R. L. 439.

Acceptance for accommodation of third party. Payment by drawer does not relieve acceptor: *Dill v. Wheatley*, 34 N. S. 526.

Discharge by agreement for payment by payee for whose accommodation bill was made: *Watson v. Porter*, 3 Kerr (N.B.) 137; *Peters v. Waterbury*, 24 N. B. 154.

Section 130 (Payment by drawer or indorser). Drawer's right to recover from acceptor: *Banc v. Strandland*, 3 O. R. 214; *Gosdin v. Evans*, *Banc M. L. R.* 3 Q. B. 430.

Indorser who pays does not succeed in his right of recoupe against prior parties: *Bove v. McDonald*, 16 L. C. R. 191.

Two endorsements for accommodation of maker. Last indorser paying can only recover half the amount from prior indorser: *Vallee v. Talbot*, Q. R. 1 S. C. 223.

No recourse against prior indorsers where no protest nor waiver: *Savard v. Pichette*, Q. R. 20 S. C. 344.

Section 141 (Acceptor holding at maturity). Principle of section is "confusion" of civil law: Arts. 1198, 1199 C. C.

Section 142 (Renouncing rights). Payment of sum less than amount of bill is a discharge in Quebec, Ontario and Manitoba, which have adopted the civil law rule; *Mackay on Bills*, 3d Ed., 340.

Section does not apply where plaintiff's title to bill is obtained by assignment without indorsement: *Clonbrook Steam Boiler Co. v. Brown*, Q. R. 18 S. C. 515.

Time given to maker of note to collect indorser: *Sheples v. Hurc*, 3 Ont. A. R. 539; *Banc v. Eaton*, 2 Kerr (N.B.) 243. But not delay of indorsee with no funding agreement to give time: *Wilson v. Brown*, 6 Ont. A. R. 87; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Pelletier v. Brossard*, M. L. R. 6 S. C. 331; *Guy v. Pare*, Q. R. 1 S. C. 433; *Le Jeune v. Sparrow*, 1 Terr. L. R. 384.

Reservation of rights: *Canadian Bank of Commerce v. Northwood*, 14 O. R. 207.

Time to indorser for whose accommodation note was made: *Leet v. Blumenthal*, Q. R. 17 S. C. 250; *Davanney v. Brownlee*, 8 Ont. A. R. 355; *Banque Nationale v. Betourneau*, 18 R. L. 175.

And see *Merchants Bank v. McKay*, 15 S. C. 672; *Allison v. McDonald*, 23 S. C. 635.

Section 152 (Face cancellation). Cancellation of signature: *Macmillan v. Armstrong*, 5 R. L. 213; *Biggs v. Wood*, 2 Ont. L. R. 272; *Isaacs v. Grothe*, 29 N. B. 420.

Section 153 (Alteration). Addition to note by holder of words "extended to Nov. 28th, '02," written on its face, discharges maker: *McComb Life Assur. Co. v. McLaughlin*, 36 C. L. J. 630.

Two makers of note, one signing for other's accommodation. Third party signing after maturity a material alteration which discharges accommodation maker: *Carroll v. Beatty*, 21 Ont. A. R. 302, revg. 28 O. R. 175.

Insertion by holder of words "jointly and severally" before "promise to pay" in note signed by several persons, some being sureties for others, a material alteration which avoids note: *Banque Provinciale v. Arnoldi*, 2 Ont. L. R. 621; *Peoples Bank v. Wharton*, 27 N. S. 67. And also changing date of demand payable with interest though maker may benefit: *Boulton v. Langmuir*, 21 Ont. A. R. 618.

But mere correction of error by changing 1886 to 1896 is not: *McLaren v. Miller*, 36 C. L. J. 680.

Insertion of interest clause or rate—Intention—Expert evidence: *British Columbia Land and Investment Agency v. Ellis*, 6 B. C. 82; *Halerow v. Kelly*, 28 U. C. C. P. 551.

Whether alteration is material or not is a question of law: *In re Commercial Bank*, 10 Man. 171. But question of the alteration itself is for the jury: *Domville v. Davies*, 13 N. S. 159; *Street v. Walsh*, 5 All. (N. B.) 343.

For other examples of material alterations see McLaren, 3rd ed., 350-3.

ACCEPTANCE FOR HONOUR.

Section 153 (Supra protest). Person taking up for benefit of particular party obtains title of person from whom, not for whom, he receives it. He cannot indorse it over and all parties subsequent to him for whose honour it is taken up are discharged: *Cowan v. Peplittle*, 48 U. C. Q. B. 398; *MacArthur v. MacDowall*, 23 S. C. 571.

LOST INSTRUMENTS.

Section 157 (Indemnity). Offer to reimburse maker if note should be found not sufficient. Should be offer of security that maker should never be troubled: *Pillow & Hersey Co. v. L'Esperance*, Q. R. 22 S. C. 213.

Rule applies to case of non-negotiable note probably destroyed, as well as to a negotiable note merely mislaid: *Ib.*; *Cooley v. Dominion Building Soc.*, 24 L. C. J. 111.

And see *Rowan v. Ross*, 3 Que. P. R. 391.

Security may be given to satisfaction of Master: *Orton v. Brett*, 12 Man. 448.

In Quebec demand for security should be by exception dilaatoire under art. 177 C. C. P.; *Brown v. Bardeen*, Q. R. 13 S. C. 151.

Bank not liable for note lost in mails—Offer of security: *Litman v. Montreal City and District Savings Bank*, Q. R. 13 S. C. 262.

Surrender of bill obtained by fraud: *McIntyre v. McGregor*, 21 C. L. T. Occ. N. 25; *Matthews v. Marsh*, 5 Ont. L. R. 540.

Decree for plaintiff without security when defendant did not demand it: *Abell v. Morrison*, 23 Gr. 109.

See also *Hudon v. Gervais*, Q. R. 7 S. C. 221.

CONFLICT OF LAWS.

Section 160 (Governing law). Application of law of a particular Province: *Cook v. Dodds*, 6 Ont. L. R. 608; *Hope v. Caldwell*, 21 U. C. C. P. 241; *Robertson v. Caldwell*, 31 U. C. Q. B. 402.

Note payable abroad governed by Canadian law: *Cloyes v. Chapman*, 27 U. C. C. P. 22; *MERCHANTS BANK v. Stirling*, 13 N. S. 439.

Bill drawn on resident of Ontario governed by foreign law: *Story v. McKay*, 15 O. R. 169. And see *London & Brazilian Bank v. Maguire*, Q. R. 8 S. C. 358.

Section 162 (Duties of holder). Presentment, etc., governed by foreign law: *Howard v. Sabourin*, 5 L. C. R. 45; *Allen v. McNaughton*, 4 All. (N. B.) 234.

Section 161 (Due date). Note drawn in Montreal payable in New York matured on Sunday. Protest on Saturday according to New York law was regular; Bank of America v. Copland, 4 L. N. 154.

PART III.

CHEQUES ON A BANK.

Reference in general is directed to the annotations in Parts II. and IV.

Section 165 (Nature of cheque). See the definition of a Bill of Exchange in s. 17. See also the annotations to s. 23, supra, that section dealing with bills payable on demand. "Bank" here must be read in the light of the definition in s. 2 (c) of the Act. This excludes unincorporated banks or savings banks.

"A post-dated cheque is the same thing as a bill of exchange at so many days' date as intervene between the day of delivering the cheque, and the date marked upon the cheque." Per Kelly, C.B., in *Forster v. Mackreth*, L. R. 2 Exch. at p. 167.

Since the law was codified in England by the Bills of Exchange Act, 1882, it has been decided that a document in the form of a cheque addressed by one branch of a bank to another branch of the same bank would not fall within the meaning of a "cheque" as defined in this section: See *Brown v. National Bank*, 18 T. L. R. 669; *Capital and Counties Bank v. Gordon* [1903] A. C. 240.

And see *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244.

A cheque should not be paid before the date it purports to be drawn: See per Abinger, C.B., in *Morley v. Culverwell*, 7 M. & W. at p. 181.

A cheque is not invalid because "it is antedated, or postdated, or that it bears date on a Sunday or other non-juridical day": See s. 27 supra. Nor is it invalid because it does not specify the value given, or the place where it is drawn or where it is payable: see *Ibid.* See also *Wood v. Stephenson*, 16 U. C. B. 419.

as to whether a cheque is "money"; See *Davidson v. Fraser*, 23 Ont. A. R. 439; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155. In *Russell v. Sealy*, 2 N. Z. R. C. A. 198, it was held that an accepted cheque drawn on a bank was equivalent to cash within the meaning of the New Zealand land regulations of 1855.

Restrictive endorsement of cheque: See *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

A cheque operates as payment until it has been dishonoured: *Hughes v. Canada Permanent, etc., Society*, 39 U. C. Q. B. 721.

As to the law of cheques in general, see the following Canadian cases:—*Agriculture, etc., Assn. v. Federal Bank*, 6 Ont. A. R. 192; *The Queen v. Bank of Montreal*, 1 Ex. C. R. 154; *Boyd v. Nasmith*, 17 Ont. R. 40; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155; *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244; *Kenny v. Price*, 20 R. 1; *Dion v. Boulanger*, Q. R. 4 S. C. 358; *Dion v. Lachance*, Q. R. 14 S. C. 77; *Laraway v. Harvey*, Q. R. 14 S. C. 97; *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518; *Banque St. Hyacinthe v. Guilbault*, 8 Rev. de Jur. 115; *Re Commercial Bank*, *Banque d'Hochelaga's Case*, 10 Man. R. 171; *Knauth Nachod v. Stern*, 30 N. S. R. 251; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49; *London Life Ins. Co. v. Molsons Bank*, 5 Ont. L. R. 407; *Silverstone v. Bank of Hochelaga*, 21 C. L. T. (Occ. N.) 309; *Marler v. Molsons Bank*, 23 L. C. J. 293; *Brown v. Livingstone*, 21 U. C. Q. B. 438; *City Bank v. Smith*, 20 U. C. C. P. 93; *Thorold Mfg. Co. v. Imperial Bank*, 13 Ont. R. 330; *Todd v. Gore Bank*, 1 U. C. Q. B. 40; *Wood v. Stephenson*, 16 U. C. Q. B. 419; *Blackley v. McCabe*, 16 Ont. A. R. 295; *Gore Bank v. Royal Canadian Bank*, 13 Gr. 425; *Dufresne v. Jacques Cartier Building Society*, 5 R. L. 235; *Dufresne v. St. Louis*, 3 M. L. R. 4 S. C. 310; *Banque Nationale v. City Bank*, 17 L. C. J. 197; *Pratt v. MacDougall*, 12 L. C. J. 243; *Baril v. Tetreault*, 29 L. C. J. 208; *Lord v. Hunter*, 6 L. N. 310; *Campbell v. Riendeau*, Q. R. 2 Q. B. 604; *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10; *Marler v. Molsons Bank*, 23 L. C. J. 293; *Bank of Montreal v. Rankin*, 1 L. N. 302; *Nicholls v.*

Ryan, 2 R. L. 111; *Rex v. Bank of Montreal*, 10 Ont. L. R. 117 (affirmed Sup. Ct. Can.); *London Late Ins. Co. v. Molsons Bank*, 8 Ont. L. R. 238; *Rose-Belford Printing Co. v. Bank of Montreal*, 12 Ont. R. 511; *Lagare Arcand*, 33 C. L. J. 290.

Section 165, ss. 2 (Presentment for payment). A cheque does not operate as an assignment of the right to collect it to a bank available for its payment, and until accepted, is not negotiable: *Caldwell v. Merchants Bank*, 26 U. C. C. P., 294. See provisions of s. 127. But, under clause (b) of s. 166, if the bank has refused to pay a cheque not presented within a reasonable time of its issue, although the drawer had the right at the time of such presentment, as between him and the bank, to have the cheque paid, the bank is liable to the holder of the cheque for the damage sustained by the drawer by reason of such refusal. (See notes to s. 166 infra.) See *Silverstone v. Bank of Hochelaga*, 21 C. L. T. (Ore. N.Y.) 309; see, contra, *Marler v. Molsons Bank*, 23 L. C. J. 293. Cf. *Gorrand's French Code of Commerce* (2nd ed.), p. 241, et seq.

A bank may pay, without special instructions therefor, any bills or notes made or accepted payable thereby by one of its customers: See *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448; *Bank of England v. Vagliano*, [1891] A. C. 107.

A banker does not owe to the holder of a cheque the duty of knowing his customer's signature: See *Rex v. Bank of Montreal*, 10 Ont. L. R. 117; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49.

As to forged cheque payable to order: See s. 49, supra.

As to person drawing a cheque on bank where he has no account upon which he obtains goods or money: See *Crim. Code*, ss. 468 (r) and 405.

Cheque "payable at par" at a named bank—Effect of words—Liability—Right to charge back on dishonour: *Rose-Belford Printing Co. v. Bank of Montreal*, 12 Ont. R. 511.

(Improper payment).—Marking by bank—Fraudulent alteration—Money paid under mistake of fact—Negligence—Notice of dishonour—Reasonable delay. Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49, affirming s. c. in 31 S. C. R. 554.

Cheque drawn for specific purpose—Payment—Application to other purposes—Notice—Trust. Leipschitz v. Montreal Street Ry. Co., Q. B. 9 Q. B. 518.

Section 166 (Presentment—Reasonable time). Coalminers (Bills of Exchange, 6th ed., p. 250), says that this section is "new law." See the following cases as to "reasonable time": Re Oulton, 15 N. B. R. 333; Owens v. Quebece Bank, 30 U. C. Q. B. 382; Redpath v. Kolfage, 16 U. C. Q. B. 433; Boyd v. Nasmyth, 17 Ont. R. 40; Blackley v. McCabe, 16 Ont. A. R. 295; Sawyer v. Thomas, 18 Ont. A. R. 129; Marler v. Stewart, 2 Steph. Que. Dig. 111; Campbell v. Riendeau, Q. B. 2 Q. B. 601; Legaré v. Arcand, Q. R. 9 S. C. 122; Lord v. Hunter, 6 L. N. 310.

Section 167 (Bank's authority to pay). See notes to s. 165, s.s. 2, supra.

Section 167 (a) (Countermand). See Twibell v. London Suburban Bank, W. N. 1869, p. 127; Cohen v. Hale, 3 Q. B. D. 371; McLean v. Clydesdale Bank, 9 App. Cas. 95; Elliott v. Crutchley, [1903] 2 K. B. 476.

Section 167 (b) (Death of customer). See Colville v. Flanagan, 8 L. C. J. 225. This case is in apparent conflict with Hewitt v. Kaye, L. R. 6 Eq. 198, which decided that in order to constitute a good *donatio mortis causa* of the donor's own cheque on a banker, the cheque must be presented before donor's decease. In the latter case (p. 200), Lord Romilly, M.R., said: "A cheque is nothing more than an order to obtain a certain sum of money, and it makes no difference whether the money is at a banker's or anywhere else. It is an order to deliver the money; and if the order is not acted upon in the lifetime of the person who gives it, it is worth nothing . . . The authority to act upon it is withdrawn by the donor's death." See, however, Trunkfield v. Proctor (1901) 2

Ont. L. R. 326, where it was held by Falconbridge, C.J., that an order signed by a mortgagor on his private banker with whom he had a deposit account, such order being payable to mortgagee or bearer, and which, although delivered by the mortgagor to his banker, was not paid during the lifetime of the mortgagor, was not a cheque but a bill of exchange, and was not revoked by the drawer (the mortgagor's) death. On appeal, the Divisional Court held that the transaction amounted either to an equitable assignment of the amount or a trust to pay over the same to the mortgagee, which became irrevocable on its being communicated to the parties and assented to by them.

CROSSED CHEQUES.

Section 168 (Dividend warrants). See the provisions of s. 7, supra.

Note.—In the 3rd ed. of Mr. Justice Maclaren's work on Bills, Notes and Cheques, it is stated (p. 397) that these provisions relating to crossed cheques "are copied from the Imperial Act, with the substitution of 'bank' for 'banker,'" as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not prevail in Canada before the Act, and it is not likely to be generally adopted now, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt s. 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the indorsement on cheques drawn upon it."

See the following English cases on "crossed cheques:" National Bank v. Silke, [1891] 1 Q. B. 435; Bellamy v. Majoribanks, 7 Exch. 389; Smith v. Union Bank, 1 Q. B. D. at p. 33; Simmons v. Taylor, 27 I. J. C. P. 248; Capital & Counties Bank v. Gordon, [1903] A. C. 210; Carlon v. Ireland, 5 E. & B. 765; Hannan v. Armstrong, 16 T. L. R. 236; Clarke v. London and County Bkg. Co., [1897] 1 Q. B. 552; Matthews v. Brown, 10 T. L. R. 386; Lacave v. Credit Lyonnais, [1897] 1 Q. B. 148; Great Western Ry. Co. v. London & County Banking Co., [1901] A. C. 414.

PART IV.

PROMISSORY NOTES.

Reference in general is directed to the annotations in Part II.

Section 176 (Promissory notes defined).

Mr. Justice MacLaren (Bills, Notes and Cheques, 3rd ed., p. 406), after observing that this definition is an adaptation of that of a bill of exchange as stated in s. 17 supra, goes on to say that it does not change the law existing at the time of the passing of the Act "except that in Nova Scotia and New Brunswick notes payable otherwise than in money, which, under provincial Acts, were in certain respects placed on the same footing as promissory notes payable in money, and were generally called promissory notes, will no longer be so considered. A note payable to a specified person and not to his order, or to bearer, was considered a promissory note before the Act, but was not negotiable."

Reference at large is directed to the notes explanatory of the provisions of s. 17, supra, defining a bill of exchange. See also the following cases, where instruments more or less irregular in form were held to be valid promissory notes:

Babineau v. Laforest, 37 N. B. R. 156, affirmed 37 S. C. R. 521, where it was held that the following was a good promissory note:—

\$1,200. "Edmundston, N.B., July 12th, 1899.

"Received from N. P. B. the sum of twelve hundred dollars for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. (Signed) F. L."

Church subscription list as several note of each subscriber: Thomas v. Grace, 15 U. C. C. P. 462.

Municipal debentures under C. S. L. C. c. 25, payable to bearer: Eastern Townships Bank v. Compton, 7 R. L. 446, Macfarlane v. St. Cesaire, M. L. R. 2 Q. B. 160.

Instrument worded:—"On demand —— months after date, I promise to pay to A. B., or order," etc.: Commercial Bank v. Allan, 10 Man. R. 330.

A notarial act containing an engagement to pay a sum of money in any event and unconditionally: Aurele v. Durocher, 5 R. L. 165.

A promise to pay in cash or goods at option of holder: McDonell v. Holgate, 2 Rev. de Leg. 29.

Instrument purporting to be given for a binder which was to remain property of the payee until paid for, the payee to do repairs, etc.: Merchants Bank v. Dunlop, 9 Man. R. 623. But see Dominion Bank v. Wiggins, 21 Ont. A. R. 275; Imperial Bank v. Bromish, 16 C. L. T. (Osc. N.) 21; Bank of Hamilton v. Gillies, 12 Man. R. 495; Prescott v. Garland, 34 N. B. R. 291.

And see Kennedy v. Exchange Bank, 30 L. C. J. 266; Palliser v. Lindsay, M. L. R. 6 Q. B. 311.

(Fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it. Held, that signer was not liable: Banque Jacques Cartier v. Lessard, 13 Q. L. R. 39.

And see Jacques Cartier Bank v. Lalande, Q. R. 20 S. C. 43.

As to intention of parties to make a promissory note when instrument not negotiable in form: See Harvey v. Bank of Hamilton, 16 S. C. R. 714.

Instrument in form of "I.O.U." sufficient as a negotiable instrument if a promise to pay can be spelled out of it: See Gray v. Warden, 29 U. C. Q. B. 535.

In Quebec a simple bon, "Good on demand," has been held in several cases as a good negotiable instrument. See Hall v. Bradbury, 1 Rev. de Leg. 180; Beau-dry v. Laflamme, 6 L. C. J. 307; Cridiford v. Bulmer, M. L. R. 4 Q. B. 293; Désy v. Daly, Q. R. 12 S. C. 183.

But in the Ontario case of Palmer v. McLennan, 22 U. C. C. P. 565, the following: "Good to Mr. Palmer for \$850 on demand," was held not to conform to the requirements of a valid note.

Section 176, s.-s. 2 (Endorsement of note payable to maker's order). See *Burns v. Harper*, 6 U. C. Q. B. 509; *Ennis v. Hastings*, 9 N. B. R. 482; *Wallace v. Henderson*, 7 U. C. Q. B. 88. Cf. *Slater v. Laboree*, 10 Ont. L. R. 648; *Robinson v. Mann*, 31 S. C. R. 484.

Section 176, s.-s. 3 (Collateral security pledged). Cf. the provisions of s.-s. 2 of s. 17, which render a bill of exchange invalid "which orders any act to be done in addition to the payment of money." See notes thereto *supra*. This sub-section annuls the effect of the decisions to the contrary in *Hall v. Merrick*, 40 U. C. Q. B. 566; *Sutherland v. Patterson*, 4 Ont. R. 565.

Section 177 ("Inland" and "foreign"). See *Merchants Bank v. Stirling*, 13 N. S. R. 439.

Section 178 (Delivery). See s. 2 (f) of the Act. See also s. 40 and notes *supra*.

Section 179 (Joint and several note). "The Bills of Exchange Act does not deal with the consequences which are to flow from the character which, according to its provisions, is attached to the promise which a bill or promissory note contains, whether that of joint or joint and several liability. These consequences, in my opinion, fall to be determined according to the law of the province in which the liability is sought to be enforced, and inasmuch as in this province the common law rule as to joint contracts has been superseded by statutory enactment, R. S. O., 1897, c. 129, s. 15, the provisions of the latter are to govern." Per *Meredith, C.J.*, in *Cook v. Dodds* (1903) 6 Ont. L. R. at p. 613. And see *Toronto Dental Co. v. Maclaren*, 14 Ont. P. R. 89; *McDonald v. Gillis*, 33 N. S. R. 244; *Gardner v. Shaver*, 13 C. L. T. (Osc. N.) 287; *Bogart v. Robertson*, 11 Ont. L. R. 295.

For the law of the province of Quebec as to joint and several obligations, see Art. 1105, *C. L. C.*, with annotations in Beauchamp's Civil Code, vol. I., p. 1077, et seq.

Section 179, s.-s. 2 (Individual promise). See *Creighton v. Allen and Fretz*, 26 U. C. Q. B. 627.

Section 180 (Demand note). See the English case of *Re George, Francis v. Bruce*, 14 Ch. D. 627, and cf. the following Quebec cases: *Dandurand v. Roulier*, 33 L. C. J. 167; *Bachand v. Lalumiere*, Q. R. 21 S. C. 449; *Beaudry v. Renaud*, 8 Rev. de Jur. 490. See also *Thorne v. Scovil*, 4 N. B. R. 557.

Section 180, s.s. 2 (Reasonable time). See the above cases, and *Commercial Bank v. Allan*, 10 Man. 330; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Banque du Peuple v. Denicourt*, Q. R. 10 S. C. 428.

Section 181. See notes to above section.

Section 182. See notes to s. 180 supra.

Section 183 (Presentment—Liability of maker). See notes to ss. 85, 87 and 88, supra. See also *Merchants Bank v. Henderson*, 28 Ont. R. 360; *Sharp v. Power*, 33 N. S. R. 371; *Cunard v. Symon-Kaye*, 27 N. S. R. 344; *Müller v. Dodge*, 23 N. S. R. 191; *De la Chevrotiere v. Guilmet*, 9 L. N. 412; *O'Brien v. Stevenson*, 15 L. C. R. 265; *Mount v. Dunn*, 4 L. C. R. 348; *Mineault v. Lajoie*, 9 L. R. 382; *Croft v. Hamlin*, 2 B. C. R. 333.

Section 184 (Presentment to bind indorser). See ss. 85-93, with notes, supra. See also note to above section; and consider the effect of s. 92, supra, the provisions of which apply to promissory notes mutatis mutandis.

Section 185 (Maker's obligation — Estoppel). See *Perkins v. Beckett*, 29 U. C. C. P. 395; *Kinnard v. Tewsley*, 27 Ont. R. 398.

And see the provisions of s. 152, as to the analogous position of the acceptor of a bill; and see the provisions of s. 186. See also *Duthie v. Essery*, 22 Ont. A. R. 191, and cf. *Ayr*, etc., *Plough Co. v. Wallace*, 21 S. C. R. 256.

Section 187 (Protest of foreign notes). Cf. the provisions of s. 112 as to the necessity of protesting foreign bills of exchange.

